

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF RICHMOND - CRIMINAL TERM - PART: 5

-----X
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

ANTHONY RUCANO,

Defendant.
-----X

Indict. No. 270/2009

18 Richmond Terrace
Staten Island, New York
September 8, 9, 10, 2010

B E F O R E:

HONORABLE STEPHEN J. ROONEY, Justice

A P P E A R A N C E S:

DANIEL M. DONOVAN
DISTRICT ATTORNEY, RICHMOND COUNTY
Attorney for the People
BY: ANTHONY KATCHEN, ESQ.,
RAJA RAJESWARI, ESQ.,
Assistant District Attorneys

EUGENE LAMB, ESQ.
18B Attorney for the Defendant

ELAINE FORLENZA, RPR
OFFICIAL COURT REPORTER

11 OCT 19 P2:30

SUPREME COURT
RICHMOND COUNTY
STATED BY JUDGE

1 THE CLERK: Calendar Number 3, step up,
2 Anthony Rucano. Appearances please.

3 MR. KATCHEN: Anthony Katchen, Raja
4 Rajeswari for the People.

5 MR. LAMB: Eugene Lamb for the defendant.

6 THE COURT: I guess we have some
7 preliminary matters to deal with.

8 THE CLERK: Take seats.

9 THE COURT: Can I have the consent of both
10 sides to swear the panel collectively when we get
11 them over here?

12 MR. KATCHEN: Yes.

13 THE COURT: Rather than individually?

14 MR. KATCHEN: Yes.

15 MR. LAMB: Yes.

16 THE COURT: For my portion of the voir
17 dire do you want me to say anything to the panel
18 they may draw no inference unfavorable to the
19 defendant if he does not testify?

20 MR. LAMB: I'm sorry?

21 THE COURT: If you want me to but only if
22 you want me to, I will say to the jury if the
23 defendant does not testify in a criminal case that
24 is not a factor from which any inference
25 unfavorable to the defendant may be drawn. If you

1 want me to say that I will.

2 MR. LAMB: I would appreciate that, yes.

3 THE COURT: Give me your best estimate
4 counsels as to how long this trial is going to
5 last. It looks like we are going to start picking
6 this afternoon today. I assume we'll have a jury
7 by some point tomorrow.

8 When do you think the case will go to the
9 jury? I have to tell them something.

10 MR. KATCHEN: I expect the People will be
11 resting either next Wednesday or Thursday. I
12 would say more toward Wednesday.

13 THE COURT: Do you anticipate a case?

14 MR. LAMB: Well, Judge, as I indicated in
15 chambers we only have one possible witness other
16 than the defendant himself and that would be
17 Dr. Brustein, our battered woman syndrome expert,
18 who indicated to me the only good day next week
19 would be Wednesday. Perhaps if we get to that
20 point perhaps we can take him out of order.

21 THE COURT: We could go out of order if
22 the People consent.

23 MR. KATCHEN: That's fine.

24 MS. RAJESWARI: That's fine.

25 MR. LAMB: Okay.

1 (Discussion held off the record between
2 the defendant and Mr. Lamb.)

3 MR. LAMB: Defendant is indicating he may
4 have two additional witnesses he would like to
5 call. So that I guess that would be a total of
6 four potential defense witnesses, that is
7 including the defendant.

8 THE COURT: Maybe I should give the panel
9 a two-week date then just to be safe. Today is
10 the 8th. I will tell them if it's acceptable to
11 everybody the case will go to the jury no later
12 than the 22nd. That would be two weeks from
13 today. Probably before then, but not later than
14 that. Does that sound safe?

15 MR. KATCHEN: Yes.

16 THE COURT: I have the People's
17 witnesses. Mr. Lamb, do you want to hand one up?

18 MR. LAMB: I'm sorry, Judge?

19 THE COURT: Witness list.

20 MR. LAMB: At this very moment --

21 THE COURT: You want to give me the names
22 I will write them onto the People's list.

23 MR. LAMB: Let me just have a second.

24 (Short pause.)

25 MR. LAMB: Dr. Michael Brustein

1 B R U S T E I N.

2 THE COURT: Brustein?

3 MR. LAMB: Yes.

4 THE COURT: You don't need Dr. Brustein's
5 date of birth, do you?

6 MR. KATCHEN: No.

7 THE COURT: You indicated there might be
8 two other witnesses?

9 MR. LAMB: Steve Frankl F R A N K L. And
10 Frank Ortiz O R T I Z.

11 THE COURT: Ortiz.

12 THE DEFENDANT: I am not sure if it's I Z
13 or E Z.

14 THE COURT: Get the dates of birth so it
15 will save time.

16 Do you want to deal with the Antommarchi
17 issue? We are going to hand out a waiver -- I
18 guess we already did. You can discuss that with
19 your client.

20 (Discussion held off the record between
21 the defendant and Mr. Lamb.)

22 MR. LAMB: We have discussed the
23 Antommarchi issue. The defendant is prepared to
24 waive.

25 THE COURT: Okay. Can you both sign off

1 on that?

2 MR. LAMB: Yes.

3 (Short pause in proceedings.)

4 THE COURT: Let's get your client on the
5 record with regard to Antommarchi if you don't
6 mind.

7 MR. LAMB: Sure.

8 THE COURT: Mr. Rucano, I am sure your
9 lawyer just explained this to you. You have a
10 right to be present during all the essential and
11 critical stages of the trial right from jury
12 selection through the verdict.

13 During jury selection undoubtedly the
14 lawyers and I will be having sidebar conferences
15 with potential jurors in an effort to determine
16 whether they could be fair. You have a right to
17 be present at these sidebar conferences if you
18 want, but you can waive that right and have your
19 lawyer represent you at these conferences.

20 I gather from the written waiver having
21 discussed this with your lawyer you are waiving
22 your right to be present at these sidebar
23 conferences; is that right?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: He explained the situation to

1 you?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Did you sign this waiver?

4 THE DEFENDANT: Yes, I did, your Honor.

5 THE COURT: Mr. Lamb, would you
6 acknowledge you explained it to your client and
7 signed it as well?

8 MR. LAMB: Yes.

9 THE COURT: I will sign the Antommarchi
10 as approved. I will make it part of the court
11 file. And, Mr. Rucano, if you change your mind
12 tell your lawyer. You can change your mind at any
13 time. If you decide at any point you want to be
14 present at those sidebar conferences just tell
15 Mr. Lamb and we'll arrange for that.

16 MR. LAMB: The defendant indicates he
17 wishes to address the Court. I am advising him
18 anything he says will be taken down by the court
19 stenographer and can be used against him.

20 THE COURT: I prefer to speak to the
21 lawyers. It's a lot better for you that way, but
22 if you have something you want to say go ahead.

23 THE DEFENDANT: Your Honor, I just wanted
24 to be on the record that I still as you've said on
25 the stand on our last date in court, that given my

1 opportunity for my attorney to have a handwriting
2 expert come to the District Attorney's Office
3 because he was unwilling to let this diary that
4 was only seen by the District Attorney, and only
5 after he saw it was this indictment included to
6 include 19 counts. No other investigation on this
7 specific piece of paper that's called a diary has
8 been made.

9 I mean, in other words, I was charged
10 with three single counts, days before the Grand
11 Jury. Catherine comes to the District Attorney
12 with this diary which is a falsified document and
13 then all these charges are against my account. No
14 other investigation was done on this piece of
15 paper.

16 The District Attorney took it upon
17 himself look at this and he said, okay, we're
18 going to add 16 counts on the indictment. I
19 believe that this piece of paper needs to be
20 investigated by somebody at his office.

21 My attorney just told me just now he was
22 unable to get somebody to come to the office. I
23 would like to at my own expense and my family's
24 expense get a handwriting expert to come to the
25 District Attorney's Office to investigate the

1 document to prove that there were falsified
2 statements written in on different dates at the
3 same time. In other words, she went back and
4 added in stuff on multiple dates at the same time
5 concerning these charges and then presented that
6 to the District Attorney as proof what all these
7 previous charges were. There was -- nobody else
8 saw this diary except the District Attorney
9 technically making him a potential witness for
10 being the only one to see that.

11 I feel it's an important part of the case
12 and I ask your Honor to give me the chance to
13 defend myself and to get a handwriting expert to
14 come into the District Attorney's Office and look
15 at this piece of paper so that we can prove that
16 this was a falsified document used to prevent.

17 THE COURT: Okay. Let me say first based
18 on the record the last time and also in chambers,
19 the DA does not intend to introduce the diary on
20 their direct case; am I correct?

21 MR. KATCHEN: That's correct.

22 THE COURT: One never knows during the
23 hurly-burly of trial somebody might cause them to
24 make an application contrary to that. For the
25 moment they don't have any intention of

1 introducing this diary.

2 THE DEFENDANT: They informed my attorney
3 that this conversation happened on the last court
4 date and after the court, my lawyer called the
5 District Attorney, and the District Attorney told
6 him that he may be bringing it in on cross
7 reference for her to stipulate the dates. How
8 could she remember these dates?

9 THE COURT: That would depend on the
10 prosecution. For now the DA's position they're
11 not going to get into this diary on direct
12 examination. What happens on cross is up to you
13 and your lawyer. We have to go question by
14 question. Doors can be opened. That's my first
15 observation.

16 Second observation is what I said on the
17 last date several weeks ago was that the
18 handwriting expert you were dealing with would not
19 go to the DA's Office to look at the original
20 diary, I understand he has a copy, then you can
21 get another expert who would.

22 I said I would appoint one. You
23 indicated you might want to hire one. You can
24 still do that. It's not going to slow us down.

25 THE DEFENDANT: I am not trying to, but I

1 would like to have all the options available to
2 me. And if your Honor would still provide to have
3 somebody to investigate this I would appreciate
4 that.

5 THE COURT: The offer still stands. I am
6 perfectly willing to let a handwriting expert --

7 THE DEFENDANT: He can't find anyone.

8 MR. LAMB: Just for the record, Judge, I
9 contacted quite awhile ago, I don't know exactly
10 when but well over a month ago I believe, the
11 assigned counsel plan gave me a very short list of
12 the people that are on the plan that hold
13 themselves out as forensic document experts.

14 I contacted -- of the three that -- I
15 believe there were three. Out of the three that I
16 contacted only one would do it and he would do it
17 pro bono but he would not take his equipment,
18 which he claims is very difficult equipment to
19 move and very expensive equipment, he would not
20 bring that equipment to the DA's Office. That the
21 subject matter, in this case the diary, would have
22 to be brought to him and then he would be happy to
23 examine it.

24 THE COURT: This is the man from New
25 Jersey?

1 MR. LAMB: Yes. And if the Court would
2 recall I did make an application to the Court. As
3 a matter of fact, I submitted a proposed order
4 ordering the District Attorney to hand deliver the
5 diary or requesting that or indicating that the
6 person from DA's Office that was bringing the
7 diary would be able to stay during the examination
8 and be given the diary back as soon as the
9 examination was completed. So that there would be
10 no question about the compromise as to the safety
11 of this document.

12 THE DEFENDANT: If it's not planned to be
13 brought into evidence there is no reason why the
14 District Attorney shouldn't allow it to be
15 examined.

16 THE COURT: It's not going to be in
17 evidence. There is no reason to talk about it.

18 MR. LAMB: Those are the only experts
19 that I was provided with -- the names provided
20 with by the assigned counsel plan. Of course the
21 Court did not sign that order.

22 THE COURT: You opposed it. Are you
23 still opposing it?

24 MR. KATCHEN: Bringing it to New Jersey?
25 Yes.

1 THE COURT: The DA does not want to send
2 an original document to New Jersey for an expert
3 to examine in his office rather than come here. I
4 indicated you could find someone else and that
5 offer still stands. We will start picking today,
6 but you will have several days.

7 MR. LAMB: I have exhausted all of the
8 people, potential experts that were provided to me
9 by the assigned counsel plan.

10 THE COURT: All right.

11 MR. KATCHEN: I will just say as far as
12 the diary is concerned, I think Mr. Lamb did just
13 point this out if not on the record then in
14 chambers, after the last court date he did come to
15 my office and he reviewed the original diary.

16 THE COURT: He what?

17 MR. KATCHEN: He reviewed the original
18 diary.

19 THE COURT: Who did?

20 MR. KATCHEN: Mr. Lamb.

21 MR. LAMB: I did.

22 THE COURT: Okay. Well, they're not
23 going to offer it at least at this point. We
24 talked in chambers about the defense offering it.
25 I don't know what your plan is in that regard. I

1 don't know if the DA has any opposition if you
2 wanted to get into it.

3 If you can find an expert in the
4 immediate future go ahead, we'll take a break and
5 let him go over and look at it if that becomes
6 necessary. We discussed this several weeks ago
7 and I don't want it to slow us up.

8 Sandoval.

9 MR. KATCHEN: Yes, Judge. Before we even
10 get to that, I'm submitting to the Court an order
11 of protection as to one of the witnesses named on
12 my witness list.

13 THE COURT: We discussed that in
14 chambers. I will sign a temporary order directing
15 the defendant to have no contact with whom I am
16 told is a neighbor.

17 You could discuss that with your client
18 at your leisure, Mr. Lamb.

19 (Short pause in proceedings.)

20 THE DEFENDANT: We live in the same
21 building.

22 MR. LAMB: I would ask there be a limited
23 order of preotection.

24 MR. KATCHEN: I wrote on the order of
25 protection that unintentional contact with the

1 witness at that home the order would be subject to
2 that.

3 THE COURT: Do whatever is acceptable to
4 both sides.

5 MR. KATCHEN: I am not saying he should
6 move out of the house.

7 THE COURT: You still don't talk to this
8 person about the case. This doesn't mean you
9 can't go home. Doesn't mean that person can't go
10 home either. Don't talk to the person about the
11 case. Is that satisfactory?

12 MR. KATCHEN: Yes.

13 THE CLERK: Make it thirty days.

14 THE COURT: The clerk says we'll make it
15 thirty days.

16 Sandoval.

17 MR. KATCHEN: Okay. First, Judge, People
18 would -- if the defendant does testify there are a
19 few -- People have made a Molineau application
20 relating to phone calls, voice mails that the
21 defendant left, rules that were given to the
22 complainant in a form of two index cards. The
23 complainant being kicked out a hotel room Memorial
24 Day weekend for refusing to perform oral sex.
25 Repeated arguments with the defendant as to phone

1 use which she was beaten with. The defendant
2 stealing and reading journals that the complainant
3 kept. The defendant contacting the complainant's
4 therapist and insisting that he attend therapy
5 sessions with the complainant and a key logger
6 program on the complainant's computer.

7 As to all those what the People intend on
8 introducing those facts on their direct case, we
9 would also seek to question the defendant about
10 should he testify.

11 With regard to the installation of the
12 key logger program and phone use, as pointed out
13 by the Court's decision those can constitute, I
14 guess, prior criminal conduct. They are uncharged
15 at this point. And it does paint a picture as to
16 the defendant's credibility as well as again it
17 deals with the narrative, the background of their
18 relationship.

19 THE COURT: He wants to use Molineaux
20 evidence as Sandoval on this as well. You want to
21 be heard on that?

22 (Discussion held off the record between
23 the defendant and Mr. Lamb.)

24 MR. LAMB: Defendant consents.

25 THE COURT: Okay.

1 MR. LAMB: He's indicating that as long
2 as he's given an ample opportunity to rebut and
3 explain, and I am advising him that of course he
4 has the right certainly not only to answer the
5 questions in cross-examination put to him, but
6 also he has a right to continue his testimony in
7 redirect relevant to challenge the issues that he
8 was cross-examined on that have just been
9 mentioned.

10 THE COURT: That sounds like the law to
11 me. I think I am not going to prohibit you from
12 conducting a thorough direct and redirect of your
13 client. So there is a consent then, you can cross
14 on those Molineau issues. Of course having
15 excluded the one former /PEU trend or something
16 like that. You are not going to get into that,
17 right?

18 MR. KATCHEN: Yes.

19 THE COURT: What about prior convictions?

20 MR. KATCHEN: There are three convictions
21 People would want to question him about just the
22 convictions themselves on the underlying facts.
23 Beginning with the 1999, 5/11/01 conviction,
24 driving with suspended license, 1998 Kings County
25 conviction, convicted by plea of guilty to petit

1 larceny, and 1994 conviction again from Kings, two
2 unauthorized use of a computer.

3 Prior to that the defendant was convicted
4 of multiple larceny offenses dating back to the
5 '80s. The People are not seeking to question him
6 on the convictions prior to that 1994 conviction.
7 But the conviction that the People did mention, I
8 mean they do show -- the jury should hear them to
9 better judge the credibility of the defendant when
10 he does testify if he does testify.

11 THE COURT: Okay. Go ahead.

12 MR. KATCHEN: I'm sorry.

13 THE COURT: I was going to say I went
14 through the NYSIID sheet. There appear to be
15 eight prior convictions dating back to 1985 and
16 prior to that there were three YO adjudications
17 dating back to '84. Your application is the three
18 most recent convictions?

19 MR. KATCHEN: Yes, Judge.

20 THE COURT: Mr. Lamb.

21 MR. LAMB: My argument would be still the
22 remoteness with regard to those items. 1999, 1998
23 and '94 are well over a decade ago. I would ask
24 that if the Court does not preclude the People
25 from cross-examining him as those items, that the

1 Court at least strike a compromise and only ask if
2 the defendant -- be able to ask if the defendant
3 had previously been convicted of a crime on those
4 dates.

5 THE COURT: Okay. What I will do is
6 this: I am going to Sandoval out the June 9th,
7 1994, unauthorized use conviction in Kings County.
8 It's a misdemeanor, it's fifteen years old and I
9 agree I think that's remote.

10 The latter two, though, I don't think are
11 remote. One is December 14th, 1999, that's
12 aggravated unlicensed operation of a motor vehicle
13 in the third degree, in violation of Penal Law
14 Section 511 Subdivision 1.

15 Counsels, that's a misdemeanor; is that
16 right?

17 MR. KATCHEN: Yes.

18 MR. LAMB: Yes.

19 THE COURT: You're sure because I haven't
20 dealt with a 511 in fifteen years.

21 MR. KATCHEN: Yes.

22 THE COURT: So that's a misdemeanor. The
23 second one is February 9th, 1998, petit larceny
24 conviction from Kings County.

25 I don't think these are remote. There is

1 no bright line in terms of remoteness. I have
2 seen cases where 17, 18 year old convictions have
3 been permitted and affirmed. I don't think these
4 are remote, and so I will permit an inquiry. And
5 I will put my reasoning on the record.

6 I have to balance the probative value on
7 the issue of credibility versus prejudice. I
8 think aggravated unlicensed operation indicates a
9 willingness to put one's interests ahead of
10 society and hence is probative on the issue of
11 credibility. I think the prejudice of such
12 conviction is binding. So I think the probative
13 value outweighs the prejudice and I don't think
14 it's remote, so I will permit an inquiry as to
15 December of 1999 conviction.

16 Mr. Lamb proposed a compromise. I will
17 adopt this compromise and permit the DA to inquire
18 should the defendant testify whether he was
19 convicted on December 14th, 1999 of a misdemeanor.
20 Withdrawn of a crime is your proposal, right,
21 Mr. Lamb?

22 MR. LAMB: Yes.

23 THE COURT: So of a crime. Same rational
24 applies to the other conviction. This is
25 February 9th, 1998, petit larceny conviction.

1 Larceny, of course, is founded in theft. It goes
2 to the heart of credibility and honesty and I
3 think, again, the probative value on the issue of
4 credibility outweighs any prejudice which would be
5 minor in my view in regard to petit larceny. I
6 don't think that's remote either. So should the
7 defendant testify I will permit the DA to inquire
8 whether on February 9th, 1998 he was convicted of
9 a crime, again, adopting Mr. Lamb's proposed
10 compromise.

11 Is that it for Sandoval?

12 MR. KATCHEN: Two more things, Judge. In
13 his criminal contact the defendant was arrested
14 under the following names and he used aliases I
15 would like to question him about that. Some of
16 them may be attributable to just spelling mistakes
17 by whoever was inputting. Some of them clearly
18 are not.

19 The names that he's used are Anthony T.
20 Rucano, Anthony F. Rucano, Anthony Smith, Anthony
21 Rucan, Bucky Rucano, Vincent Rucano. In addition
22 to some names that looking at his rap sheets it
23 indicates they were just spelling mistakes.

24 In addition to that he used the following
25 dates of birth: July 9th of 1966, July 9th of

1 1967, and July 15th of 1967.

2 Again, with the aliases and the dates of
3 birth defendant is showing he is not a trustworthy
4 source of information and the jury should know
5 that upon assessing his credibility should he
6 testify.

7 MR. LAMB: Judge, I'm sorry --

8 THE COURT: I didn't say anything until I
9 hear you.

10 MR. LAMB: First of all, remoteness
11 applies to that as it applies to the actual acts
12 themselves.

13 Secondly, I think we're all familiar with
14 the ministerial mistakes that are frequently made
15 by the NYSIID system. Fingerprint records
16 frequently have misspellings and it certainly
17 cannot be said dispositively that the defendant
18 represented -- overtly represented these names to
19 the arresting officers. We don't know anything
20 about the circumstances of the arrests, and it
21 appears all of them end with the name Rucano.

22 I don't even know whether if they may
23 have asked him do you have a nickname or street
24 name. He may have said Bucky. That frequently
25 occurs. I think the Court is aware of that.

1 Again, I stress the remoteness of this.

2 THE COURT: I think I agree with the
3 defense here. Mistakes are often made on entries.
4 We're all familiar with that. It's hard to know
5 without going deep into these matters and speaking
6 to the people involved whether or not we're
7 dealing with simple error or some intent to
8 misrepresent.

9 I just don't have enough information to
10 rule favorably as far as the People are concerned.
11 I will deny your application. I will not permit
12 any inquiry as to dates of birth or aliases.

13 MR. KATCHEN: I think that's it, Judge.

14 THE COURT: Well, I guess we're ready.
15 Then I have a couple of more cases I would like to
16 call before lunch. It's ten after twelve.

17 MR. KATCHEN: Judge, prior to the case
18 being called I turned over some additional
19 Rosario. I turned over some additional Rosario.

20 It's DD5s that were completed by
21 Detective Christopher Connolly of the NY computer
22 crime squad. I am just handing a copy of the
23 cover sheet.

24 MR. LAMB: Acknowledge receipt.

25 THE COURT: By the time we got a panel

1 over here it would take 20, 30 minutes. I suggest
2 we start at two. Is that acceptable?

3 MR. KATCHEN: Yes.

4 MR. LAMB: Yes.

5 THE COURT: Two o'clock.

6 Mr. Rucano, let me give you what are
7 called Parker Warnings. You are not incarcerated.
8 You are out on bail, I understand. And I am sure
9 you are going to show up throughout the pendency
10 of the trial. You haven't missed any dates, in my
11 part anyway, so I expect you to be here. But I am
12 required to warn you that since you are not
13 incarcerated it's up to you make sure you get
14 yourself here every adjourned date and recess
15 date.

16 First would be at 2 p.m. this afternoon
17 and then probably start up tomorrow morning at ten
18 and proceed until the trial is finished. You have
19 to make sure you are here at every appointed time.
20 If you fail to appear at any juncture of your own
21 volition then we'll proceed without you. That's
22 called trying a person in absentia. That's not a
23 good thing for you to do. You have to make sure
24 you are here.

25 THE DEFENDANT: What did I just sign that

1 paper for?

2 THE COURT: What paper?

3 THE DEFENDANT: The paper stating my
4 lawyer --

5 THE COURT: That's the Antommarchi
6 issues. That's where you could be present at
7 sidebar conferences.

8 THE DEFENDANT: So I still have to be
9 here today this afternoon?

10 THE COURT: You have to make sure you
11 show up for the trial. First, for example, the
12 next time is 2 p.m. this afternoon. We are going
13 to break for lunch, but you have to be here at
14 two. We are going to start jury selection.

15 Then you have to be here tomorrow morning
16 at ten and then 2 p.m. tomorrow afternoon and so
17 on until the trial is finished. You have to make
18 sure you are here. You look confused. What don't
19 you understand?

20 THE DEFENDANT: I thought by signing that
21 paper that my lawyer was going to be taking care
22 of this. I didn't have to come back until the
23 trial started.

24 THE COURT: Today is the date we're
25 starting. We're starting at 2 p.m. I am just

1 telling you make sure you are here.

2 THE DEFENDANT: I have to be here at two.

3 THE COURT: Correct. And then tomorrow.

4 We're going to break at the end of the afternoon

5 and resume tomorrow morning and we are going to

6 proceed that way until the trial is finished.

7 You have to make sure you are here. If

8 you fail to appear at any time of your own

9 volition then I take that as a waiver on your part

10 of your right to be present and we will continue

11 the trial without you. Now I don't expect this to

12 be a problem. You are going to do.

13 THE DEFENDANT: If you are telling me to,

14 yes.

15 THE COURT: I am. I have to advise you

16 if you fail to appear at any time of your own

17 volition I will take that as a waiver of your

18 right to be present and we will continue the trial

19 without you and that's not a good thing. Your

20 lawyer will tell you that. I have to advise you

21 of this since you are not incarcerated. Do you

22 understand these Parker Warnings?

23 THE DEFENDANT: Yes.

24 THE CLERK: Mr. Rucano, sign the bottom

25 of the order of protection. Stay away from the

1 witness.

2 (Pause in proceedings.)

3 THE DEFENDANT: Is this the only witness
4 that's being called by the District Attorney then?

5 THE COURT: No, they have a witness list
6 of several names, but this is one apparently you
7 will be seeing and they want to make sure you have
8 no -- you don't discuss the case with that person.
9 How do we limit this order? What does it say?

10 (Handed to the Court.)

11 THE COURT: The Court's written in the
12 order shall be subject to unintentional contact at
13 40 something terrace.

14 MR. KATCHEN: Silverton.

15 THE COURT: Silverton Terrace. So if you
16 run into this person inadvertently that's not a
17 violation of the order, but you can't speak to the
18 person about the case.

19 THE DEFENDANT: Well, she is my neighbor
20 and we talk every day. She asked me to take out
21 the garbage. This is news to me.

22 THE COURT: That's all right.

23 THE DEFENDANT: We get along fine.

24 THE COURT: Just don't talk to her about
25 the case.

1 Is that satisfactory to the DA?

2 MR. KATCHEN: That's fine.

3 THE COURT: I will add that in.

4 (Short pause.)

5 THE COURT: I am just adding in not to
6 discuss the case.

7 THE CLERK: I will add it in?

8 THE COURT: Yes.

9 (Pause in proceedings.)

10 THE CLERK: Take this. Step out.

11 THE COURT: One other thing for the
12 record. I handed out a piece of paper from a
13 certified social worker, Ms. Angela Russo
14 Moromarco, licensed certified social worker who
15 interviewed the complainant at various times
16 during the time period in question. I believe she
17 also interviewed the defendant at various times.

18 I have been through it. Mr. Lamb
19 subpoenaed it for in camera inspection. There is
20 a confidential social worker privilege that is
21 codified in Section 45.08 of the CPLR. And having
22 been through this I am satisfied there is nothing
23 for me to turn over except the one piece of paper
24 I did turn over which I think is arguably Brady
25 material. I gave both sides a copy. So you can

1 certainly read that.

2 THE DEFENDANT: Your Honor, that
3 Ms. Russo Moromarco, is the lady that she and her
4 were going to couples counselling together. I
5 paid for the session.

6 So there was a couple session. She also
7 went to the same therapist on her own for
8 individual counselling, actually on her -- first
9 interview was the date of my birthday actually
10 last year.

11 THE COURT: She is not on the People's
12 witness list. They don't intend to call her and
13 she is not on your witness list. So I gather she
14 is not a witness in this case. Okay. 2 p.m.

15 THE CLERK: Step out.

16 Trial is second called.

17 (Matter later recalled.)

18 AFTERNOON SESSION.

19 (Prospective jurors entered courtroom.)

20 THE CLERK: Jurors please stand. Raise
21 your right hand to be sworn as prospective jurors.

22 Do you and each of you solemnly swear
23 that you will answer truthfully all questions put
24 to you relative to your qualifications to serve in
25 this action so help you God?

1 ALL JURORS: I do.

2 THE CLERK: Thank you. Be seated. Turn
3 off your cell phones.

4 THE COURT: Good afternoon. Welcome to
5 Supreme Court Richmond County. I'm sorry we
6 couldn't get you over here this morning. I was
7 working on other cases, not this one, and we got
8 you over here as fast as we could. I apologize
9 for the delay.

10 We are about to begin jury selection in a
11 criminal case. This case is called People of the
12 State of New York against Anthony Rucano.
13 Mr. Rucano is known as the defendant in the case.
14 The indictment in this matter involves charges of
15 rape in the first degree, attempted rape in the
16 first degree, criminal sexual act in the first
17 degree, assault in the second degree, tampering
18 with physical evidence, menacing in the second
19 degree, criminal possession of a weapon in the
20 third degree, assault in the third degree, and
21 criminal mischief in the fourth degree.

22 The trial is the process by which we'll
23 determine if any of the charges are proven by
24 sufficient evidence, and I will talk to you about
25 that shortly.

1 The first thing I want to do is give you
2 an idea of our schedule. We anticipate selecting
3 the jury this afternoon and probably into
4 tomorrow. The process takes a little bit of time.
5 After that we will begin the trial with testimony
6 and continue until we're finished. We anticipate
7 that this will be about a week and a half trial.
8 I am going to add some time in case something
9 unforeseen delays us.

10 So what I am going to tell you is the
11 case will be at most a two-week trial. When I say
12 that the proof will be closed and the case will go
13 to the jury so they can begin deliberating in an
14 effort to reach a final unanimous verdict or
15 verdicts. No later than September 22, that will
16 be two weeks from today. Probably earlier than
17 that, but no later than that. So that's the
18 anticipated duration of the case.

19 In terms of our day-to-day operations we
20 generally work from 9:30 or ten depending on our
21 schedule in the morning until about five in the
22 afternoon with our jurors. We take an hour off
23 for lunch usually between one and two.
24 Occasionally we go past five for scheduling
25 reasons. If that happens and it's rare, but if it

1 happens it will not be long past five and I will
2 give the jury as much advance notice. But you can
3 count on being out of the courthouse at by p.m.
4 during the trial itself.

5 This is not a particularly lengthy trial
6 by our schedule. I am not sure how you are going
7 to going to feel about it. But what I will say to
8 you at this point is that I am permitted to
9 consider three categories when it comes to
10 excusing people immediately.

11 The first category is health problems.
12 The second category is pressing business
13 obligations. I emphasize the word pressing and I
14 have to say if you work for a large entity, a
15 large corporation, the City, the State, something
16 of that sort, it's difficult for me to let you go
17 immediately on that basis. Not to say I won't
18 listen to you, but keep that in mind. The third
19 category deals with pressing personal reasons.
20 You will be the judge of what they are if you have
21 any such reasons.

22 So I hope you can stay with us through
23 this selection process during which I and the
24 lawyers will be talking to you in an effort to
25 determine if you could be fair jurors. But if you

1 feel you fit into one of those three categories I
2 just mentioned and you would like to speak to me
3 and the lawyers right now about being excused,
4 would you raise your hand please?

5 (Hands raised.)

6 THE COURT: Okay. What I am going to do
7 is ask those of you who raised your hand to form a
8 line at the corner of the rail where the sergeant
9 is and we will speak to you one at a time.

10 THE CLERK: Single file.

11 THE COURT: I'm going to cut this line
12 off. Line is formed. This won't take long.
13 Thanks for your patience.

14 THE CLERK: Sergeant, line is closed.
15 Counsels, step over please.

16 (The following took place at the sidebar
17 on the record:)

18 THE CLERK: First juror step up.

19 (Prospective juror approached.)

20 THE CLERK: Stand there. Tell the judge
21 your name.

22 PROSPECTIVE JUROR: Laurie Trochetta.
23 It's a Jewish holiday and I am Jewish. It starts
24 tonight and the holiday. I brought my birth
25 certificate.

1 THE COURT: I will take your word for it.

2 PROSPECTIVE JUROR: It starts tonight.

3 It starts at sundown tonight but tomorrow you
4 don't travel at all.

5 THE COURT: Tomorrow is Thursday. What
6 about Friday?

7 PROSPECTIVE JUROR: No. Right after this
8 starts another holiday.

9 THE COURT: Counsels?

10 MR. KATCHEN: No problem. Like she said
11 there is another holiday next week.

12 MS. RAJESWARI: Consent.

13 MR. LAMB: I have no objection to
14 excusing the juror.

15 THE COURT: Consenting?

16 MR. LAMB: Consent.

17 THE COURT: Excuse me?

18 MR. LAMB: Yes.

19 THE COURT: You are excused. Thank you.

20 (Prospective juror excused.)

21 THE CLERK: Next.

22 (Juror approached.)

23 THE CLERK: Please stand there and tell
24 the judge your name.

25 PROSPECTIVE JUROR: Kim Enmuschovic. I

1 was asked by my employer to say if I got to this
2 point to postpone this because two secretaries in
3 my office are away from Friday until the following
4 Monday.

5 THE COURT: Who do you work for?

6 PROSPECTIVE JUROR: Peter Calvanico,
7 engineer in Staten Island.

8 THE COURT: Do they pay you while you're
9 here?

10 PROSPECTIVE JUROR: Not that I know of.
11 They didn't say.

12 THE COURT: Counsellors.

13 PROSPECTIVE JUROR: I would say no
14 because I work by the hour.

15 THE COURT: You work by the hour.

16 MR. LAMB: So you feel if you were
17 selected you would be worried about --

18 PROSPECTIVE JUROR: Somebody not being in
19 the office.

20 MR. LAMB: -- somebody covering rather
21 than listening to the trial.

22 PROSPECTIVE JUROR: That's my job.

23 MR. LAMB: I would consent.

24 MR. KATCHEN: Yes.

25 THE COURT: You're excused.

1 (Prospective juror excused.)

2 THE CLERK: Take this back to central
3 jury. Next.

4 (Prospective juror approached.)

5 THE CLERK: Stand here. Tell the judge
6 your name.

7 PROSPECTIVE JUROR: Megan Teagen. My
8 friend was brutally raped and murdered two years
9 ago and I just started a new job back in July.

10 THE COURT: In terms of your friend is
11 this the kind of thing that would affect your
12 ability to be fair?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Counsels?

15 MR. LAMB: I consent.

16 MR. KATCHEN: Consent.

17 THE COURT: You are excused.

18 THE CLERK: Back to central jury.

19 Next.

20 (Prospective juror excused.)

21 (Prospective juror approached.)

22 THE CLERK: Tell the judge your name.

23 PROSPECTIVE JUROR: Andrew Guido. I have
24 a business matter. The company I work for was
25 taken public and I was sort of the point person.

1 THE COURT: Do they pay you while you're
2 here?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: That's the problem. I can't
5 really let you go at this point. It doesn't mean
6 you're on the jury but I am going to ask you to
7 stick around.

8 PROSPECTIVE JUROR: That's fine.

9 THE CLERK: Please have a seat. Juror
10 not excused.

11 (Prospective juror approached.)

12 THE CLERK: Tell the judge your name.

13 PROSPECTIVE JUROR: My name is Joe Robert
14 and I am a journalist. I am working for a Chinese
15 newspaper with the China press located in midtown
16 Manhattan.

17 THE COURT: Is that going to prevent you
18 from being able to serve on this juror?

19 PROSPECTIVE JUROR: I can't say. Each
20 time I served many times but each time when I say
21 I am journalist they don't want me.

22 THE COURT: That doesn't disqualify you.
23 The lawyers may want to make a note and may want
24 to talk to you a little later. We will let you
25 have a seat and talk to you later.

1 (Prospective juror not excused.)

2 (Prospective juror approached.)

3 THE CLERK: Please tell the judge your
4 name.

5 PROSPECTIVE JUROR: Joe Charlemagne. Two
6 things. I have a wedding on Friday. Also I work
7 for the Staten Island Advance. As it is we are
8 really understaffed and I am falling behind.

9 THE COURT: What time would you have to
10 be out of here on Friday if you were on this jury?

11 PROSPECTIVE JUROR: It's an all day
12 event. We are taking -- at eleven taking
13 pictures.

14 THE COURT: In the morning?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Your wedding?

17 MR. LAMB: Your wedding?

18 PROSPECTIVE JUROR: No. It's actually my
19 girlfriend's sister and she is in the wedding.

20 THE COURT: Travel?

21 PROSPECTIVE JUROR: Yes, to Jersey.

22 THE COURT: Well, in terms of the
23 Advance, they pay you while you are here?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: I think I will ask this

1 gentleman to stay with us for now and see what
2 happens. I mean if you feel differently.

3 MR. KATCHEN: Did you say you can't be
4 here at all?

5 MS. RAJESWARI: If we finish early?

6 PROSPECTIVE JUROR: Just complicates
7 things. They want me there. I want to be there.

8 THE COURT: Sure.

9 MR. LAMB: I would consent to his
10 excusal.

11 MR. KATCHEN: Yes.

12 THE COURT: You are excused. Next please.

13 (Prospective juror excused.)

14 (Prospective juror approached.)

15 THE CLERK: Please tell the judge your
16 name.

17 PROSPECTIVE JUROR: Ray Catan. I am the
18 owner of a custom store in New York. I am the
19 sole proprietor and I work seven days a week.
20 Without me being there my business has a good
21 chance of failing.

22 THE COURT: You are putting a guilt trip
23 on me.

24 PROSPECTIVE JUROR: I work seven days a
25 week, 80 hours a week.

1 MS. RAJESWARI: We'll consent.

2 MR. LAMB: I will consent.

3 THE COURT: We'll excuse you. Thank you.

4 (Prospective juror excused.)

5 THE CLERK: Next. Tell the judge your
6 name.

7 PROSPECTIVE JUROR: Rafael Masui. I am
8 in business, a restaurant. I work in the kitchen.

9 MR. LAMB: I am having a hard time
10 hearing.

11 PROSPECTIVE JUROR: I have a restaurant,
12 work in the kitchen. I work in the kitchen. Two
13 weeks I cannot keep the place.

14 THE COURT: This is your restaurant?

15 PROSPECTIVE JUROR: Yes.

16 MR. LAMB: I would consent.

17 MR. KATCHEN: Yes.

18 THE COURT: You are excused. Thank you.

19 (Prospective juror excused.)

20 (Prospective juror approached.)

21 THE CLERK: Tell the judge your name.

22 PROSPECTIVE JUROR: Diane Facaro. Your
23 Honor, I have a small child.

24 THE COURT: Counsels?

25 MR. KATCHEN: Consent.

1 MR. LAMB: Consent.

2 THE COURT: You are excused. Thank you.

3 (Prospective juror excused.)

4 (Prospective juror approached.)

5 THE CLERK: Please tell the judge your
6 name.

7 PROSPECTIVE JUROR: My name is Omar
8 Wilfredo. I work for the New York City Department
9 of Education. I am an operations director and
10 we've just recently reorganized and in the process
11 of moving our office. So long story short, I am
12 in the process of training people to do what I do.
13 So if I were to serve on a jury most likely I
14 would be going to work another three or four or
15 five hours. And school is opening so there is a
16 lot of things going on. I work on the operations
17 side.

18 THE COURT: You talk about the Department
19 of Education. I am inclined to ask this man to
20 stay with us but I don't know how you feel about
21 it. We'll do that. I mean you are a Board of Ed
22 employee. I can't let you go right now. This
23 doesn't mean you are on the jury but we are going
24 to question you a little later.

25 (Prospective juror not excused.)

1 THE CLERK: Next. Please tell the judge
2 your name.

3 PROSPECTIVE JUROR: My name is Mario
4 Canal. I no go to school. I no read, no write.

5 THE COURT: Counsellors.

6 MR. KATCHEN: Consent if he doesn't
7 understand.

8 THE COURT: English problem.

9 MR. LAMB: I would consent.

10 THE COURT: You are excused. Thank you.

11 (Prospective juror excused.)

12 (Prospective juror approached.)

13 THE CLERK: Tell the judge your name.

14 PROSPECTIVE JUROR: My name is Paolo
15 Aresti. I own two restaurants. I got to make a
16 schedule.

17 THE COURT: Counsellors?

18 MR. LAMB: Consent.

19 MR. KATCHEN: Consent.

20 THE COURT: You are excused. Thank you.

21 (Prospective juror excused.)

22 (Prospective juror approached.)

23 THE COURT: Tell the judge your name.

24 PROSPECTIVE JUROR: Patrice Sing. I
25 recently left my house Sunday, residing in Yonkers

1 temporarily. I am out of work, not receiving any
2 unemployment and I have a job interview on
3 Tuesday.

4 THE COURT: Counsellors?

5 MR. KATCHEN: Consent.

6 MR. LAMB: On consent. You are excused.

7 Next please.

8 (Prospective juror excused.)

9 (Prospective juror approached.)

10 THE CLERK: Tell the judge your name.

11 THE CLERK: My name is Debra Duncce. I
12 don't get paid for my time off from my job. Not
13 only that I got bad anxiety and I feel I am going
14 to pass out right now.

15 THE COURT: Don't pass out.

16 PROSPECTIVE JUROR: I am just afraid it's
17 going to take away from me paying attention to
18 what's going on at the trial. I am trying to keep
19 myself calm.

20 THE COURT: You don't get paid while
21 you're here?

22 PROSPECTIVE JUROR: Not at all.

23 THE COURT: Counsels?

24 MR. LAMB: Consent.

25 MR. KATCHEN: Consent.

1 THE COURT: You are excused.

2 (Prospective juror excused.)

3 (Prospective juror approached.)

4 THE CLERK: Please tell the judge your
5 name.

6 THE COURT: My name is Ivan Farrick. I
7 am a physician. They call me when they have to
8 put them to sleep to get the specimen out from the
9 vagina. I would be -- I am not going to be a fair
10 juror. I also see the victim side. I see how
11 much damage happen. I am not going to be --

12 MS. RAJESWARI: What kind of doctor?

13 PROSPECTIVE JUROR: I am a pediatrician.

14 MS. RAJESWARI: Always on the victim's
15 side?

16 PROSPECTIVE JUROR: That's my job.

17 MR. LAMB: On consent.

18 MR. KATCHEN: Consent.

19 THE COURT: You are excused. Next
20 please.

21 (Prospective juror excused.)

22 (Prospective juror approached.)

23 THE CLERK: Tell the judge your name.

24 PROSPECTIVE JUROR: My name is Christina
25 Marco. I am in a dance company and we have

1 rehearsals and touring and I cannot miss work
2 because I have to be there. There are only six of
3 us and I have to be with them to tour. It's a
4 dance company. You can look it up on the
5 Internet.

6 THE COURT: Counsellors?

7 MR. KATCHEN: No problem, consent.

8 THE COURT: Consent?

9 MR. LAMB: Consent.

10 (Prospective juror excused.)

11 (Prospective juror approached.)

12 THE CLERK: Tell the judge your name.

13 PROSPECTIVE JUROR: Charles Arobo. I
14 have a series of meetings scheduled from the 20th
15 to the 24th and I have colleagues coming from
16 Germany. I have to set up meetings before then.

17 THE COURT: Counsellors?

18 MR. LAMB: I'm sorry, I didn't hear.

19 PROSPECTIVE JUROR: I have meetings
20 scheduled from the 20th to the 24th with
21 colleagues coming from Germany and before then I
22 have to prepare pre-meetings, all of that other
23 stuff to make that meeting happen before this job.

24 MS. RAJESWARI: What are you?

25 PROSPECTIVE JUROR: I am a tech manager.

1 Head Germany and work with subsidiary in New York.

2 MR. LAMB: You would be thinking of that
3 more than paying attention to the trial, is what
4 you're saying? We might be finished.

5 PROSPECTIVE JUROR: If you go before then
6 then my job might need me. I'm sorry for the
7 language. I am compromised because I am hosting
8 the meeting.

9 MR. LAMB: Consent.

10 MR. KATCHEN: Consent.

11 THE COURT: You are excused.

12 (Prospective juror excused.)

13 (Prospective juror approached.)

14 THE CLERK: Tell the judge your name.

15 PROSPECTIVE JUROR: Jennifer Luseeka. I
16 manage the advertising for professional
17 associates. No one else does my job.

18 THE COURT: What kind of association?

19 PROSPECTIVE JUROR: Association for
20 computing.

21 THE COURT: Do they pay you while you're
22 here?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: That's the problem. I can't
25 really let you go at this point. It doesn't mean

1 you're on the jury but I have to ask you to stick
2 around, ask you a few questions later. You can
3 have a seat.

4 (Prospective juror not excused.)

5 (Prospective juror approached.)

6 THE CLERK: Please tell the judge your
7 name.

8 PROSPECTIVE JUROR: Juanita Abdul.

9 THE COURT: What's the problem?

10 PROSPECTIVE JUROR: I don't know if I
11 could be on a jury right now. I am a little shaky
12 because I am diabetic. I didn't have enough to
13 eat today.

14 THE COURT: You are not feeling well now?

15 PROSPECTIVE JUROR: No, because I'm a
16 little shaky. I didn't have enough to eat. I
17 wasn't prepared.

18 THE COURT: Counsellors?

19 PROSPECTIVE JUROR: I would have to sit
20 for you.

21 MR. LAMB: Consent.

22 MR. KATCHEN: Consent.

23 THE COURT: You are excused.

24 PROSPECTIVE JUROR: For today?

25 THE COURT: You go back to central jury.

1 You have to deal with them, where you came from.

2 PROSPECTIVE JUROR: Thank you.

3 (Prospective juror excused.)

4 (Prospective juror approached.)

5 THE CLERK: Tell the Judge your name.

6 PROSPECTIVE JUROR: Rodney Gonzalez. I
7 have a couple of situations. One of them is
8 medical treatment next week. I had an accident.
9 Was run down by a bicyclist and my collarbone and
10 also I have to move from my place. I have been
11 evicted and am looking for a place to live.

12 THE COURT: Counsellors?

13 MR. KATCHEN: Consent.

14 MR. LAMB: Consent.

15 THE COURT: Consent?

16 MR. LAMB: Yes.

17 THE COURT: You are excused.

18 (Prospective juror excused.)

19 (Prospective juror approached.)

20 THE CLERK: Tell the judge your name.

21 PROSPECTIVE JUROR: My name is Mia
22 Santos. I have a seven-year-old and it was hard
23 to find somebody to pick him up. I have a son
24 seven years old after school.

25 THE COURT: It's a child care issue

1 counsels.

2 MR. LAMB: Consent.

3 MR. KATCHEN: Consent.

4 THE COURT: You are excused.

5 (Prospective juror excused.)

6 (Prospective juror approached.)

7 THE CLERK: Tell the judge your name.

8 PROSPECTIVE JUROR: My name is Stan

9 Marino. I have a two-year-old at home and I am a
10 primary baby-sitter.

11 THE COURT: There is nobody else who
12 could do it?

13 PROSPECTIVE JUROR: No. I wish there
14 was.

15 THE COURT: Counsellors?

16 MR. LAMB: Consent.

17 MR. KATCHEN: Consent.

18 THE COURT: You are excused.

19 (Prospective juror excused.)

20 (Prospective juror approached.)

21 THE CLERK: Please tell the judge your
22 name.

23 PROSPECTIVE JUROR: Matt Catalano. About
24 two to three weeks ago my daughter went out on the
25 island, went to a club, came home that night with

1 heavy bleeding from the vagina. My wife had to
2 take her to the doctor. Doctor told her there was
3 some penetration. Maybe forced. I feel I heard
4 what this case is about. You are not going to
5 have the right kind of guy.

6 THE COURT: You don't think you could be
7 fair?

8 PROSPECTIVE JUROR: No, not at all. If I
9 had a bat I would bash -- never mind.

10 THE COURT: Counsellors?

11 MR. LAMB: Consent.

12 MR. KATCHEN: Consent.

13 (Prospective juror excused.)

14 (The following took place in open court:)

15 THE COURT: Thank you for staying with
16 us. I told a few of you I couldn't excuse you at
17 this point. I'm sorry about that. I don't enjoy
18 that part of my job but I have certain guidelines
19 I have to follow, so I hope you can appreciate
20 that.

21 I am going to give you a few preliminary
22 remarks. Then we will fill the jury box and begin
23 questioning people.

24 As I said earlier the trial process by
25 which we'll determine if any of the charges are

1 proven by sufficient evidence. And in that
2 process those of you selected as jurors and I as
3 the judge in the case perform separate functions.
4 Jurors are called upon to determine whether or not
5 the evidence they hear and see in the case
6 establishes the defendant's guilty of the charges.

7 In order to do this the jury will have to
8 evaluate all the evidence at the end of the trial
9 in order to determine whether what they've heard
10 from witnesses and seen as exhibits is true and if
11 so what it all means. This is called finding the
12 facts. That's the jurors's job alone. The judge
13 finds no facts at a jury trial.

14 The jury's ultimate decision is called a
15 verdict. The verdict will be either guilty or not
16 guilty, or after hearing all of the evidence the
17 jury may find the defendant guilty of some charges
18 and not guilty of others.

19 The attorneys present the evidence. They
20 usually do this by calling witnesses and they may
21 suggest that the jury draw certain conclusions
22 from the evidence. But only the jury can decide
23 what really happened and the verdict as to each of
24 the counts submitted will remain the jury's
25 decision alone. The judge makes no determination

1 of guilt or lack of guilt at a jury trial. My
2 role at the trial is to simply ensure the jury
3 reaches its verdict or verdicts in accordance with
4 the law. I will explain the law as to all the
5 issues in this trial. You don't have to know any
6 law in order to be a juror.

7 In order for both sides to receive a fair
8 trial I may have to rule on questions concerning
9 the conduct of the trial. Those rulings have
10 nothing to do with whether this defendant is
11 guilty or not guilty.

12 I may also rule on questions concerning
13 what evidence may be considered and if so for what
14 purpose. When I do make a ruling whether the jury
15 may hear testimony or see an exhibit which is
16 offered as evidence, I will be ruling on whether
17 or not they be permitted to hear or see this as
18 permitted by the law.

19 Should the jury be instructed to
20 disregard something that he may have heard it will
21 be because that's the law. None of my rulings
22 during this trial or during this jury selection if
23 I have to make any should be taken by you as
24 indicating whether all or part of what's
25 eventually offered as evidence should be believed

1 or whether the defendant is guilty or not guilty.
2 Again, that's solely the jury's job to determine.

3 You do have to, however, except the law
4 as it is given to you if both sides are to receive
5 the fair trial to which they are entitled. And in
6 that regard I will be discussing some fundamental
7 legal issues with you shortly.

8 The People of the State of New York
9 Richmond County are represented by the District
10 Attorney Daniel Donovan. Mr. Donovan is
11 represented at this trial by Assistant District
12 Attorneys Anthony Katchen and Raja Rajeswari.
13 They are seated at this table.

14 MS. RAJESWARI: Good afternoon.

15 THE COURT: The defendant as I have
16 already said is Anthony Rucano and Mr. Rucano is
17 represented by his lawyer Mr. Eugene Lamb and they
18 are seated at this table.

19 MR. LAMB: Good afternoon.

20 THE DEFENDANT: Good afternoon.

21 THE COURT: The fact that this action is
22 brought by the name of the people, that the
23 evidence is presented by public officials, does
24 not in any way indicate the public wants a
25 specific verdict. The People of this state are

1 served by whatever verdict is justified by the
2 evidence.

3 Serving on a jury is a vital function for
4 citizens under our system of law and also a great
5 responsibility which is to accord both sides a
6 fair trial. In order to do this the jury must be
7 free from any preconceived notions or any
8 sympathies or prejudices which might prevent them
9 from returning a fair and just verdict based
10 solely on the evidence or the lack of evidence.

11 And to help insure this our first order
12 of business is to conduct an examination of
13 prospective jurors. I am going to ask some
14 questions and lawyers will ask some questions.
15 The purpose of this questioning is simply to
16 determine whether or not you are qualified to sit
17 as a juror in this particular case.

18 A number of you will not be selected.
19 Some of you will be excused because you are not
20 qualified to sit as a matter of law. And these
21 people will be excused for cause. Others amongst
22 you will be excused peremptory which means by one
23 of the attorneys without any cause being given.

24 I want to emphasize at this point if you
25 are excused it's not a reflection on you as a

1 person, a citizen. It has nothing to do with
2 honesty or integrity. Please don't feel insulted
3 if you are excused. If you excused it is simply a
4 result of a determination by the lawyers or by me
5 that you are not to sit as a juror in this
6 particular case.

7 Should I or the lawyers ask you any
8 questions you would rather not answer in open
9 court, just raise your hand and tell us and we
10 will step to the side and discuss these issues
11 privately.

12 So the clerk is now going to pull sixteen
13 names randomly from the drum. If you hear your
14 name called, step up and have a seat where the
15 officer directs you.

16 THE CLERK: Seat Number 1, step up,
17 Brian Merrick. M E R R I C K. Seat Number 1.

18 Seat two, Robert Schlaeger.
19 S C H L A E G E R.

20 Seat three, Patricia Comerford.
21 C O M E R F O R D.

22 THE CLERK: Mr. Lamb, the lineup so far
23 is Merrick one, Schlaeger two, Comerford three.

24 Number 4, step up, Benjamin Santlofer.
25 Could you spell your last name?

1 PROSPECTIVE JUROR: S A N T L O F E R.

2 THE CLERK: Seat four, S A N T L O F E R.

3 Seat five, Amy Scaravaggio.

4 S C A R A V A G G I O. Seat five.

5 Seat six, Matthew Santoro S A N T O R O.

6 Seat seven, Angelo Paolino P A O L I N O.

7 Seat eight, James Sisti S I S T I.

8 Seat nine, step up, Brian Ritchie.

9 R I T C H I E. Seat nine.

10 Seat ten, Melissa Ripa. R I P P A.

11 Seat eleven, Matthew Rand. R A N D.

12 Twelve, Joan Santore S A N T O R E.

13 Thirteen, Aramis Ramirez R A M I R E Z.

14 Fourteen, Caroline Ferreri F E R R E R I.

15 Fifteen, Omar Pereyra P E R E Y R A.

16 Sixteen, David Maxwell M A X W E L L.

17 Sixteen prospective jurors seated.

18 THE COURT: I'll be directing my

19 questions to the people in the jury box. It would

20 help if everybody listened. We'll probably speak

21 to most of you before this process is finished and

22 things go quicker when you know the questions.

23 But for now I am talking to people in the jury

24 box.

25 I told you the nature of the charges in

1 this case. The complaining witness in the case is
2 a woman named Duane Ramos. D U A N E. Last name
3 R A M O S. I know this is not a lot of
4 information at this point, but my question is
5 based on what you've heard so far.

6 Do any of you think you know anything
7 about this case, think you've heard anything about
8 it, talked to anybody about it, perhaps read
9 anything about it? I don't know if the Advance
10 wrote anything about it or not. Nobody on this.

11 I've introduced the lawyers and the
12 defendant to you. Do any of you know any of them?

13 Let me read to you a list of potential
14 witnesses in this case. My reading these names
15 does not impose on anyone the burden of calling
16 these people but these are people who may testify
17 at this trial and I'd like to know if you
18 recognize any of the names. I will read them all
19 and then you can tell me.

20 Duane Ramos. Detective William Wasson.
21 W A S S O N. Police Officer Albert Lloyd.
22 Jennifer King, a criminalist from the medical
23 examiner's office. Dr. Nancy Needell. That's
24 N E E D E L L. Stefania Mach. M A C H.
25 Detective Investigator Margaret Eng-Wallace. Last

1 name is hyphenated, E N G hyphen Wallace. PA
2 physician's assistant by the name of Rina Ganeles.
3 G A N E L E S. Court clerk by the name of Steven
4 Paradiso. Police Officer Sharon Brown. Detective
5 Christopher Connolly. Dr. Michael Brustein
6 B R U S T E I N. Steve Frankl. Last name
7 F R A N K L and Frank Ortiz.

8 Anyone recognize any of those names?

9 Good.

10 MR. LAMB: Judge, may we approach?

11 THE COURT: Yes.

12 (Discussion held off the record at the
13 bench.)

14 THE COURT: I have just been given two
15 more names of potential witnesses. Diane Smith
16 and a police officer Monkai Lewis. First name is
17 M O N K A I. Last name Lewis L E W I S. Does
18 anyone recognize either of those names?

19 I am going to put another series of
20 questions to all of you. Just raise your hand if
21 you have an affirmative answer. I will get to you
22 probably in no particular order but I will get to
23 you.

24 First question, are any of you or anyone
25 close to you and when I say close to you I mean

1 close friends or relatives involved in law
2 enforcement in any way or have you or have they
3 been so involved?

4 Ms. Comeford, who do you know?

5 PROSPECTIVE JUROR: My dad. He has since
6 passed away. He was a police officer and my
7 brother-in-law is a retired detective.

8 THE COURT: Okay. Is there anything
9 about their former occupations, any discussions
10 you may have had with them, what they did which
11 would prevent you from being a fair juror?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Talking about war stories.
14 You think that would prevent you from being fair?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Okay. The lawyers might want
17 to talk to you further about that. I will leave
18 that up to them.

19 Mr. Schlaeger?

20 PROSPECTIVE JUROR: My nephew was a
21 policeman.

22 THE COURT: He's retired?

23 PROSPECTIVE JUROR: Retired now.

24 THE COURT: Anything about his former
25 occupation that would have any bearing on your

1 ability to be fair?

2 PROSPECTIVE JUROR: I don't think so.

3 THE COURT: Thank you.

4 Mr. Santlofer, did you have your hand up?

5 PROSPECTIVE JUROR: Yes. My current
6 roommate's best friend is a police officer.

7 THE COURT: Anything about that that
8 would prevent you from being fair?

9 PROSPECTIVE JUROR: I don't think so.

10 THE COURT: Anyone else in the first row?

11 Mr. Pereyra?

12 PROSPECTIVE JUROR: Yes. My girlfriend's
13 brother-in-law, he is a retired detective and her
14 niece is an Assistant District Attorney in
15 Brooklyn.

16 THE COURT: Well, it could be considered
17 -- is this a friend?

18 PROSPECTIVE JUROR: My girlfriend's
19 brother-in-law is a retired detective and her
20 niece is an Assistant District Attorney.

21 THE COURT: Okay. In Brooklyn you said?

22 PROSPECTIVE JUROR: I believe so.

23 THE COURT: Anything about these
24 acquaintanceships which would prevent you from
25 being fair and impartial?

1 PROSPECTIVE JUROR: No, your Honor.

2 THE COURT: Thank you.

3 Other hands? Ms. Rippa.

4 PROSPECTIVE JUROR: My mother-in-law is a
5 principal in the 69th Precinct.

6 MR. LAMB: I am having a hard time
7 hearing.

8 THE COURT: Could you speak up just a
9 little?

10 PROSPECTIVE JUROR: My mother-in-law is a
11 principal in the 69th Precinct in Canarsie.

12 THE COURT: She's a principal? What does
13 that mean?

14 PROSPECTIVE JUROR: Higher up secretary.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR: My husband's aunt is
17 retired from the task force.

18 THE COURT: Task force. Anything about
19 these friendships, acquaintanceships which would
20 prevent you from being fair?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Ms. Santore?

23 PROSPECTIVE JUROR: Yes. My ex-husband
24 is a retired policeman and my daughter-in-law's
25 brother is a policeman.

1 THE COURT: Same question. Anything
2 about these acquaintanceships that would prevent
3 you from being fair?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Okay, thank you.

6 Anyone else on this question?

7 Mr. Ramirez?

8 PROSPECTIVE JUROR: My dad was a
9 detective.

10 THE COURT: He's left the job, retired?

11 PROSPECTIVE JUROR: He left the job.

12 THE COURT: Anything about his former
13 occupation which would prevent you from being
14 fair?

15 PROSPECTIVE JUROR: I don't think so.

16 THE COURT: Anyone else?

17 Next question. Are any of you or anyone
18 close to you involved in the legal field in any
19 way as a lawyer, paralegal, employee of a law firm
20 or prosecutor's office? Anything of that sort?

21 Ms. Scaravaggio?

22 PROSPECTIVE JUROR: I work in a law firm.

23 THE COURT: Does the firm practice any
24 criminal law to your knowledge?

25 PROSPECTIVE JUROR: No. Corporate. It's

1 in the city.

2 THE COURT: What do you do?

3 MR. LAMB: Legal assistant.

4 THE COURT: Anything about your
5 occupation that would prevent you from being fair?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Anyone else on this question?

8 Ms. Santore?

9 PROSPECTIVE JUROR: Yes. I deal with a
10 lot of different lawyers in my job.

11 THE COURT: What do you do?

12 PROSPECTIVE JUROR: I am a branch manager
13 for a bank. I deal with a lot of attorneys so I
14 know a lot of them.

15 THE COURT: I would imagine more real
16 estate than anything else or am I wrong?

17 PROSPECTIVE JUROR: Everything. The bank
18 accounts.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR: But not really into
21 delving into their business.

22 THE COURT: Anything about these
23 relationships that would prevent you from being
24 fair?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Anyone else on this question?

2 Have any of you or anyone close to you to
3 your knowledge ever been the victim of a crime?

4 Mr. Paolino, could you tell me a little
5 bit about it?

6 PROSPECTIVE JUROR: My nephew.

7 THE COURT: What kind of crime?

8 PROSPECTIVE JUROR: Locked up for murder.

9 THE COURT: He was locked up. I am going
10 to ask you a few questions about that. We could
11 talk about it privately if you would prefer. Would
12 you rather do that?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: We'll get to you in a little
15 while.

16 The question is have any of you or anyone
17 close to you ever been the victim of a crime?

18 Mr. Pereyra?

19 PROSPECTIVE JUROR: Yes, I have been
20 mugged.

21 THE COURT: How long ago, sir?

22 PROSPECTIVE JUROR: Oh, gees, about
23 fourteen years ago.

24 THE COURT: Anyone arrested?

25 PROSPECTIVE JUROR: On that day, yes.

1 THE COURT: Did you go to court?

2 PROSPECTIVE JUROR: No, sir.

3 THE COURT: Is there anything about that
4 experience that would prevent you from being a
5 fair juror in this case?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Anyone else?

8 Ms. Santore?

9 PROSPECTIVE JUROR: My niece was killed
10 out in Tottenville about ten years ago and I have
11 also been in two bank robberies.

12 THE COURT: You've been involved in two
13 bank robberies. You don't mean you've been
14 involved.

15 PROSPECTIVE JUROR: I was in the bank
16 when they were robbed.

17 THE COURT: Let's do the bank robberies
18 first. Anything about those experiences which
19 would prevent you from being a fair juror in this
20 case?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Did you go to court in either
23 of those cases?

24 PROSPECTIVE JUROR: No.

25 THE COURT: And your niece, I'm sorry to

1 hear what you had to say. Was that a result of a
2 criminal act?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Was anybody arrested?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: How long ago was that?

7 PROSPECTIVE JUROR: That was ten years

8 ago.

9 THE COURT: Did you go to any court
10 proceedings?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Is there anything about that
13 experience that would prevent you from being a
14 fair juror in this case?

15 PROSPECTIVE JUROR: I don't think so.

16 THE COURT: Thank you. Anyone else on
17 this question?

18 Ms. Ferreri?

19 PROSPECTIVE JUROR: My husband was held
20 up at gunpoint at his office and handcuffed and
21 robbed.

22 THE COURT: How long ago was this?

23 PROSPECTIVE JUROR: About twenty years
24 ago.

25 THE COURT: Was anybody arrested?

1 PROSPECTIVE JUROR: Not really.

2 THE COURT: Did you go to any kind of
3 court proceeding at all?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Anything about that event
6 that would prevent you from being fair in this
7 case?

8 PROSPECTIVE JUROR: Not with this, no.

9 THE COURT: Anyone else?
10 Mr. Santlofer?

11 PROSPECTIVE JUROR: When I was manager of
12 a store they got shoplifted a lot of times. I
13 called the cops.

14 THE COURT: Did you ever go to any court
15 proceedings?

16 PROSPECTIVE JUROR: I talked to a lawyer
17 once and handed over security tapes, but no
18 proceedings.

19 THE COURT: You never testified?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Anything about these
22 experiences that would prevent you from being a
23 fair juror?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Anyone else?

1 Mr. Rand?

2 PROSPECTIVE JUROR: I remember I was hit
3 in the head when I was trying to break up an
4 altercation but nothing ever came of it.

5 THE COURT: Nothing came of it? Nobody
6 was arrested?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Did you call the police?

9 PROSPECTIVE JUROR: Well, the police --
10 you know the police had come. Somebody else had
11 called the police.

12 THE COURT: You never went to any court
13 proceedings?

14 PROSPECTIVE JUROR: No, no.

15 THE COURT: How long ago was that?

16 PROSPECTIVE JUROR: That was 2003 or
17 2004.

18 THE COURT: Anything about that
19 experience that would prevent you from being fair?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Anyone else on this question?

22 My next question, Mr. Paolino has already
23 answered it and I will remind you if you want to
24 discuss anything privately we will do that. The
25 question is have you or anyone close to you, close

1 friend or relative ever been a defendant in any
2 kind of a criminal proceeding?

3 Mr. Pereyra, you want to talk privately
4 about that?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: We'll get to you shortly.

7 Anyone else? Nobody.

8 Mr. Ramirez?

9 PROSPECTIVE JUROR: I will talk to you
10 privately.

11 THE COURT: Privately, fine. We'll do
12 that after I am finished with the general
13 questioning.

14 Anyone else?

15 Have any of you ever been a witness in
16 any kind of a courtroom proceeding or Grand Jury
17 proceeding?

18 Mr. Schlaeger, can you tell me a little
19 bit about it?

20 PROSPECTIVE JUROR: Well, when I worked
21 for the bank they called me in for the bank's
22 position on a particular check cashing situation.

23 THE COURT: That was in a courtroom?

24 PROSPECTIVE JUROR: Correct.

25 THE COURT: Was it a trial?

1 PROSPECTIVE JUROR: Correct.

2 THE COURT: Was it a criminal case?

3 PROSPECTIVE JUROR: Correct.

4 THE COURT: How long ago was this?

5 PROSPECTIVE JUROR: It's got to be twenty
6 years ago.

7 THE COURT: Is there anything about that
8 experience as a witness that would prevent you
9 from being a fair juror?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Thank you.

12 Anyone else?

13 Have any of you ever been a litigant,
14 that is a plaintiff or a defendant, in any kind of
15 a civil lawsuit or civil action?

16 Mr. Schlaeger?

17 PROSPECTIVE JUROR: When I was a child I
18 was hit by a car and that went to court and there
19 was a settlement.

20 THE COURT: You didn't testify.

21 PROSPECTIVE JUROR: I was a child.

22 THE COURT: Anything about that event as
23 much as you can remember of it that would prevent
24 you from being fair?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Thank you.

2 Anyone else?

3 Have any of you been on a jury before,
4 served on a trial jury?

5 Mr. Merrick, when please?

6 PROSPECTIVE JUROR: In 2000.

7 THE COURT: Was it a criminal or civil
8 case?

9 PROSPECTIVE JUROR: Criminal.

10 THE COURT: And don't tell us how it
11 ended up, but did the jury reach a verdict?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Was there anything in that
14 experience that would prevent you from being able
15 to do it again?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Anyone else?

18 Mr. Schlaeger?

19 PROSPECTIVE JUROR: I was on Grand Jury
20 probably 30 years ago.

21 THE COURT: Richmond County?

22 PROSPECTIVE JUROR: Yes. And I sat on a
23 case up in I guess it was in Forest Avenue at the
24 time. It was a non-criminal case, but it was
25 settled before the jury.

1 THE COURT: Could that have been
2 Castleton?

3 PROSPECTIVE JUROR: Castleton.

4 THE COURT: Anything about either of
5 these experiences that would prevent you from
6 being a fair juror?

7 PROSPECTIVE JUROR: No.

8 THE COURT: If you were selected as a
9 juror in this case could you promise me and the
10 lawyers you would forget whatever -- what you may
11 remember from the Grand Jury and accept the law as
12 I give it to the trial jury in this case?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Anyone else with any prior
15 jury experience?

16 Anybody beside Mr. Schlaeger ever sit on
17 a Grand Jury?

18 What I'd like to do at this point is go
19 down the list here from one through sixteen and
20 ask you what you do for a living. If you are
21 retired what you used to do for a living. If you
22 are not employed just tell me that. I don't need
23 to know for whom you worked. I need to know what
24 type. Sometimes occupations help us decide on
25 jury section.

1 Mr. Merrick, are you employed?

2 PROSPECTIVE JUROR: Computer programmer.

3 THE COURT: Mr. Schlaeger?

4 PROSPECTIVE JUROR: I am retired now but
5 I was at Citibanker for thirty-five years, school
6 bus driver for fourteen years.

7 THE COURT: Thank you.

8 Ms. Comerford?

9 PROSPECTIVE JUROR: X-ray technologist
10 Staten Island Hospital.

11 THE COURT: Mr. Santlofer?

12 PROSPECTIVE JUROR: Manager.

13 THE COURT: Ms. Scaravaggio?

14 PROSPECTIVE JUROR: Legal assistant.

15 THE COURT: Right, you told me.

16 Mr. Santoro?

17 PROSPECTIVE JUROR: Dock worker.

18 THE COURT: Mr. Paolino?

19 PROSPECTIVE JUROR: Auto dismantler.

20 THE COURT: Mr. Sisti?

21 PROSPECTIVE JUROR: Mechanic.

22 THE COURT: Mr. Maxwell?

23 PROSPECTIVE JUROR: Retired.

24 THE COURT: From what, sir?

25 PROSPECTIVE JUROR: Retired.

1 THE COURT: What did you use to do?

2 PROSPECTIVE JUROR: I was a manager for a
3 company for model railroads.

4 THE COURT: Thanks.

5 Mr. Pereyra?

6 PROSPECTIVE JUROR: I am an operations
7 manager, operations director.

8 THE COURT: Thank you.

9 Ms. Ferreri?

10 PROSPECTIVE JUROR: Retired school
11 teacher.

12 THE COURT: And Mr. Ramirez?

13 PROSPECTIVE JUROR: On disability now. I
14 worked for 18 years as a construction laborer.

15 THE COURT: Ms. Santore?

16 PROSPECTIVE JUROR: Branch manager, bank
17 manager.

18 THE COURT: Mr. Rand?

19 PROSPECTIVE JUROR: Unemployed.

20 THE COURT: Thank you.

21 Ms. Rippa?

22 PROSPECTIVE JUROR: Clinical dental
23 assistant.

24 THE COURT: Mr. Ritchie?

25 PROSPECTIVE JUROR: Investment relations

1 for health care companies.

2 THE COURT: What I am going to do at this
3 point is discuss several fundamental principles of
4 law that apply in all criminal cases. As I said
5 before you don't have to know any law in order to
6 be a juror. It is my job to explain the law to
7 juries. You do, however, have to agree to accept
8 the law if both sides are to have a fair trial to
9 which they are entitled.

10 I am going to discuss the fundamental
11 principles that apply in all criminal cases and
12 ask you if can promise you can accept and follow
13 these rules. If you cannot accept any of them
14 please tell me. It's important we know how you
15 feel.

16 You heard me mention at the outset the
17 indictment and the charges contained therein. The
18 indictment is not evidence. The mere fact that a
19 defendant has been indicted is not evidence of
20 anything and in particular it's not evidence of
21 guilt.

22 Should you be chosen to serve as a trial
23 juror our law requires you decide the case wholly
24 and solely on the evidence and since it is our law
25 an indictment is evidence of nothing, I ask you if

1 you could promise us that you will follow and
2 accept this rule in our law. Anyone amongst you
3 who cannot accept that proposition?

4 Our law requires the final verdict or
5 verdicts in a criminal case must be unanimous.
6 Twelve jurors seldom agree immediately and you
7 will therefore if selected as a juror in this case
8 be called upon to deliberate at the end of the
9 trial in an effort to reach a final unanimous
10 verdict or verdicts. You and eleven other people
11 will go to the jury room to discuss the case in a
12 effort to arrive at a final unanimous verdict.

13 Do any of you feel you could not
14 deliberate with eleven other people in a jury room
15 if called upon to do so?

16 Under our law everyone accused of a crime
17 and brought to trial is presumed innocent unless
18 or until he was proved guilty beyond a reasonable
19 doubt. The defendant in this case is presumed
20 innocent and to put this another way a defendant
21 is never required to prove his innocence.

22 On the contrary the People represented by
23 the District Attorney, having accused the
24 defendant of the crimes charged, have the burden
25 of proving him guilty beyond a reasonable doubt.

1 The People carry this burden of proof throughout
2 the trial. It never shifts. It always remains on
3 the People and the presumption of innocence
4 remains with every defendant throughout every
5 criminal trial.

6 Is there anyone amongst you who cannot
7 now in your own mind grant the defendant this
8 presumption of innocence?

9 As I said in a criminal trial the burden
10 of proof is entirely on the People, that is on the
11 District Attorney, and it remains on them
12 throughout the trial. A defendant is not required
13 to prove anything nor is a defendant required to
14 disprove anything. As I said the entire burden of
15 proof is on the People and remains on them
16 throughout the trial.

17 Is there anyone amongst you who cannot
18 accept that rule in our criminal law?

19 If a defendant does not testify in a
20 criminal trial, that is not a factor from which
21 any inference unfavorable to such defendant may be
22 drawn.

23 Is there anyone who cannot accept this
24 rule in our law?

25 What I am going to do at this time is

1 define for you the standard of proof required for
2 conviction in every criminal case. That standard
3 of proof is called proof of guilt beyond a
4 reasonable doubt. That standard does not require
5 the People to prove the defendant guilty beyond
6 all possibility of a doubt or beyond a shadow of a
7 doubt. It does require them to establish the
8 defendant's guilt beyond a reasonable doubt.

9 Our law, therefore, requires that before
10 a jury may convict a defendant each juror must be
11 satisfied that the credible evidence is sufficient
12 to convince him or her beyond a reasonable doubt
13 that the defendant is in fact guilty. The
14 evidence must satisfy the jury beyond a reasonable
15 doubt that the defendant is in fact the person who
16 committed the crime or crimes charged and the
17 evidence must also establish beyond a reasonable
18 doubt each and every essential element of a
19 charged crime. I will define the elements at the
20 end of the trial.

21 Now what does our law mean when it
22 requires proof of guilt beyond a reasonable doubt?
23 A doubt of a defendant's guilt to be a reasonable
24 doubt must be a doubt for which some reason can be
25 given. The doubt to be reasonable must therefore

1 arise because of the nature and quality of the
2 evidence or from the lack or insufficiency of the
3 evidence.

4 The doubt to be a reasonable doubt should
5 be one which a reasonable person acting in a
6 matter of this importance can be likely to
7 entertain because of the evidence or because of
8 the lack or insufficiency of the evidence. A
9 doubt of guilt is not reasonable if instead of
10 being based on the nature and quality of the
11 evidence or insufficiency of the evidence, it's
12 based on some guess or whim or speculation
13 unrelated to the evidence.

14 Also a doubt of guilt is not a reasonable
15 doubt if it's based merely on sympathy for a
16 defendant or from a mere desire by a juror to
17 avoid a disagreeable duty. I repeat a doubt of a
18 defendant's guilt to be a reasonable doubt must
19 arise either from the nature and quality of the
20 evidence or from the lack or insufficiency of the
21 evidence.

22 Therefore, the first duty of each juror
23 is to consider and weigh all the evidence and
24 decide what evidence you believe is credible and
25 worthy of your consideration. The next duty each

1 juror is to determine whether that juror has in
2 fact a reasonable doubt of the defendant's guilt
3 as that term is defined in our law.

4 A reasonable doubt our law says is an
5 actual doubt, one which you're conscious of having
6 in your mind after you've considered all the
7 evidence. If after doing so you then feel
8 uncertain and not fully convinced of the
9 defendant's guilt and you are also satisfied that
10 in entertaining such a doubt you are acting as a
11 reasonable person should act in a matter of this
12 importance, than that's a reasonable doubt of
13 which every defendant is entitled to the benefit.

14 I repeat the duty of each juror is
15 carefully to review, weigh and consider all the
16 evidence. If after doing this you find that the
17 People have not found the defendant's guilt beyond
18 a reasonable doubt as I defined that term, then
19 you must find the defendant not guilty.

20 On the other hand if you are satisfied
21 that the People have proved the defendant's guilt
22 beyond a reasonable doubt as I have defined the
23 term, then you must find the defendant guilty.

24 Will you promise us now if you are
25 selected as a juror in this case you will in your

1 final deliberations follow and apply the standard
2 of proof that I have defined for you, proof beyond
3 a reasonable doubt? Anyone who cannot make us
4 that promise?

5 I am required to advise you with respect
6 to if you are selected, you may not during
7 deliberations consider the subject of punishment.
8 The sentencing if there is to be any following a
9 verdict lies solely within the exclusive province
10 of the Court. The jury has no role to play in
11 that. The jury is not permitted to consider the
12 possibility of punishment or penalty in their
13 deliberations and the jury may not include any
14 sentencing recommendation in their verdict.

15 The trial jury is the sole and exclusive
16 judge of the facts and the facts only. The Court
17 is the sole and exclusive judge of the law and of
18 any sentence to be imposed following a verdict.

19 Will you promise us if selected you will
20 render your verdict free from fear, favor or
21 sympathy, and without considering any possibility
22 of sentence or punishment? Anybody who cannot
23 make us that promise?

24 Okay. The last issue I will discuss with
25 you has to do with police officer testimony. As

1 you know from the witness list I read earlier it's
2 likely that the jury in this case will hear police
3 witnesses. They take the same oath as anyone
4 else. The mere fact the witness is a police
5 officer does not make that witness any more or any
6 less credible.

7 Is there anyone amongst you who has any
8 feelings about the police or who has had any
9 experiences with the police which would lead you
10 in your judgment to give a police officer's
11 testimony greater or lesser weight than anyone
12 else's merely because of the officer's occupation?
13 Anyone have that feeling one way or the other?

14 Good. Thank you very much. We're going
15 to step to the side and talk to a couple of people
16 privately and then I will let the lawyers talk to
17 you.

18 (The following took place at the sidebar
19 on the record:)

20 THE COURT: Mr. Paolino, would you step
21 over please?

22 (Prospective juror approached the
23 sidebar.)

24 THE COURT: I think you said your nephew
25 had a murder charge. How long ago was this?

1 PROSPECTIVE JUROR: Last year I don't
2 remember exactly.

3 THE COURT: Did he go to trial?

4 PROSPECTIVE JUROR: Yes, he was sentenced
5 to 21 years.

6 THE COURT: Is this here in Richmond
7 County?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: In this building?

10 PROSPECTIVE JUROR: I don't know what
11 sentence. This is in Jersey, I'm sorry.

12 THE COURT: Did you go to any court
13 proceedings?

14 PROSPECTIVE JUROR: Yes, a lot of them.

15 THE COURT: Anything about that
16 experience?

17 PROSPECTIVE JUROR: Yes, it sucked.

18 THE COURT: That's your nephew, I
19 understand. Would that prevent you from being
20 fair in this case?

21 PROSPECTIVE JUROR: I guess, yeah. I
22 have had a lot of bad thoughts about it so I
23 guess.

24 THE COURT: You think you could be fair?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: So, in other words, that
2 experience would not prevent you?

3 PROSPECTIVE JUROR: Well, there is a a
4 lot of turmoil involved. I lost a brother in the
5 interim, my nephew's father. My brother's kid got
6 put away for life. He winds up dropping dead. So
7 it's been a big thing.

8 THE COURT: The bottom line you think if
9 you were selected here --

10 PROSPECTIVE JUROR: Honestly I don't want
11 to but I got bad feelings. I got a lot of
12 different emotions about it.

13 THE COURT: Maybe I will let the lawyers
14 ask you some questions.

15 MR. KATCHEN: When you say you have bad
16 feelings could you tell us what you mean?

17 PROSPECTIVE JUROR: I was in the
18 situation with my nephew, went through a lot of
19 bad experiences. I really don't want to get into
20 it again. It upset the whole damn family. Upset
21 everybody. It's only recent.

22 MR. KATCHEN: Let me ask you sort of
23 question about the way he was treated. Do you
24 think that --

25 THE COURT: The way who was treated?

1 MR. KATCHEN: Your nephew. Do you think
2 he was treated fairly?

3 PROSPECTIVE JUROR: As far as what?

4 MS. RAJESWARI: The police, the DA.

5 PROSPECTIVE JUROR: I don't know how to
6 answer that question. For what I seen, yeah, I
7 guess so. But what went behind the scenes I can't
8 decide.

9 MR. LAMB: Did you go away with any bad
10 feelings about his defense attorney?

11 PROSPECTIVE JUROR: No, not really. No.
12 It's just the whole thing was just a horrible
13 something that got out of whack, something that
14 shouldn't have happened.

15 MR. LAMB: If I may ask, was there
16 anything of a sexual nature about the charges?

17 PROSPECTIVE JUROR: No. Just boyfriend
18 girlfriend type thing and just got out of control.

19 MR. LAMB: There was a relationship?
20 There was a relationship.

21 PROSPECTIVE JUROR: Boyfriend girlfriend
22 thing and boy going after the girl, girl going
23 after the boy. It's a different world today with
24 these kids. They're crazy, crazy. We went
25 through a lot of bad crap with it. Knocked the

1 shit out of half of the family. Excuse my French.

2 THE COURT: We'll talk about it later.

3 MS. RAJESWARI: You think that would
4 affect you?

5 PROSPECTIVE JUROR: Yes.

6 MR. LAMB: Unless you want to consent.

7 THE COURT: I'd rather do it later not
8 now. If you don't want to ask anymore questions
9 go ahead.

10 MR. LAMB: Well, okay. So your
11 understanding of this case that it rose out of a
12 boyfriend girlfriend relationship?

13 PROSPECTIVE JUROR: Yes.

14 MR. LAMB: Alleged victim was his
15 girlfriend?

16 PROSPECTIVE JUROR: Right, his
17 girlfriend.

18 MR. LAMB: They had been living together?

19 PROSPECTIVE JUROR: No, no, no. Young
20 kids. Only 18, 19 years old. 19 years old. He's
21 got -- he is in someplace in Jersey and he has to
22 go there until he's 28 and after he's 28 they're
23 shipping him somewhere else. It's a hardship.

24 THE COURT: Thank you, sir. I will let
25 you resume your seat. We will talk to you later.

1 (Prospective juror left the sidebar.)

2 THE COURT: I don't like to excuse people
3 at this point. If you are going to get challenge
4 whether it's cause or consent on this one I don't
5 know.

6 Mr. Ramirez, could you step over please?

7 (Prospective juror approached.)

8 THE COURT: Hi.

9 PROSPECTIVE JUROR: My brother-in-law was
10 accused of having sex with a thirteen-year-old. I
11 don't think -- I will be honest, I don't know all
12 the details. No one talks about it. He ain't in
13 jail and he had one of those where they tell you a
14 guy lives in your neighborhood.

15 MR. LAMB: Registered sex offender.

16 PROSPECTIVE JUROR: It's my wife's
17 brother.

18 THE COURT: Is this in Staten Island?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Did you go to any court
21 proceedings?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Anything about that that
24 would prevent you from being fair?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Counsellors, any questions?

2 MR. KATCHEN: Did say he is not on that
3 registry?

4 PROSPECTIVE JUROR: He ain't on this.

5 MR. KATCHEN: When did this happen?

6 PROSPECTIVE JUROR: It was before I got
7 married so it had to be maybe 2002, 2003.

8 MR. KATCHEN: I mean I am sure you have
9 thought about it aside from today. Did you think
10 he was unfairly accused of a crime?

11 PROSPECTIVE JUROR: I really don't know.
12 I seen the girl. She don't look like she was
13 thirteen. That's the only thought I had about it.
14 She only looked like a woman you know.

15 MR. LAMB: Did he ever talk to you?

16 MR. KATCHEN: Did he ever talk to you
17 about it?

18 PROSPECTIVE JUROR: No. I never brought
19 it up.

20 MS. RAJESWARI: Do you know what happened
21 to the case? Did he plead? Did it get dismissed?

22 PROSPECTIVE JUROR: I don't know. They
23 don't talk about so what am I going to bring it
24 up.

25 MR. LAMB: As far as you're concerned any

1 knowledge you have about that or what little
2 knowledge you have, would it have any affect on
3 your thinking in this particular proceedings?

4 PROSPECTIVE JUROR: I don't think so.

5 THE COURT: Thank you. I will let you
6 resume your chair.

7 Mr. Pereyra, would you step over please?

8 (Prospective juror approached.)

9 PROSPECTIVE JUROR: Just to give you a
10 little background my girlfriend who had I twenty
11 years my senior that's why her niece was about a
12 little older than me, you know, because my
13 girlfriend having a niece that is a District
14 Attorney. You may think it's weird. So that's
15 it. Her name is Jackie Starsella.

16 Anyway her father is retired detective
17 but any way Hylan Boulevard about a year ago. And
18 I wound up getting arrested for driving with a
19 suspended license. I didn't know my license was
20 suspended. You know, I had like twelve tickets
21 the year before. Not twelve, six to eight. I did
22 a lot of traveling talking on the cell phone. I
23 didn't pay. So I got the suspension and then I
24 don't know the cops said suspended for two reasons
25 but it wasn't. It was just one suspension and

1 scofflaw or something like. Does that make any --

2 MR. KATCHEN: That's what you were
3 suspended for?

4 PROSPECTIVE JUROR: The reason I was
5 pulled over 9 o'clock in the morning, I was on my
6 way to a doctor's appointment. The police officer
7 said he saw me reaching like this (indicating).
8 Well, as I said my phone is on like that and I had
9 blue tooth 2010. I explained to the officer he
10 said all right. I will run your plates. Of
11 course he ran my plates. Than I got three, two
12 other cars pull up arrest, process me the same
13 day. They got me out of that quick so I was happy
14 about that.

15 I am a little upset that I have never had
16 on my phone. That's why I got pulled over. Thank
17 God I did get pulled over if I was driving in
18 Jersey someone driving with a suspended license I
19 probably --

20 MR. LAMB: Would spend the night in jail.

21 PROSPECTIVE JUROR: Right. Right.
22 Exactly. That's what happened to me. CSI,
23 Criminal Minds, there are good cops, bad cops. It
24 doesn't affect my ability to make a determination.
25 But when you asked me a question I just wanted to

1 answer that, yes, I was arrested.

2 THE COURT: So the bottom line is it
3 wouldn't affect your ability to be fair.

4 PROSPECTIVE JUROR: No, sir.

5 THE COURT: Counsels, anything else?

6 MR. LAMB: I have no further questions.

7 MR. KATCHEN: Do you know what cop it
8 was, the cop who gave you the ticket? Very off
9 chance it wasn't one of the names the judge said.

10 PROSPECTIVE JUROR: No, I wouldn't
11 recognize the name. It was Hispanic American
12 working out of the precinct on Hylan Boulevard.

13 MR. LAMB: 122.

14 MR. KATCHEN: 122.

15 PROSPECTIVE JUROR: And that's where my
16 -- yeah, I will leave it at that.

17 MS. RAJESWARI: You wouldn't hold it
18 against my -- our police officers?

19 PROSPECTIVE JUROR: Of course not. I
20 have police officers in my family I respect and I
21 respect they protect my safety. That's the cops.
22 There are good cops and bad cops.

23 THE COURT: Thank you.

24 (Prospective juror resumed seat.)

25 MR. LAMB: Would it be fair to ask

1 Mr. Paolino?

2 THE COURT: The first guy? What are you
3 going to ask him?

4 MR. LAMB: I forgot whether it was asked.

5 THE COURT: What?

6 MR. LAMB: If he could be.

7 THE COURT: I asked him twice and I never
8 got a clear answer. That's why I turned to you
9 guys and said, counsels, you want to ask.

10 MS. RAJESWARI: He couldn't give us an
11 answer.

12 THE COURT: Frankly at this point I think
13 he is a cause challenge. Maybe you both agree.

14 MS. RAJESWARI: I think we can agree.

15 MR. LAMB: All right.

16 I would ask him that question without
17 going into the detail he stated here.

18 THE COURT: He never answered.

19 MR. LAMB: Based on his answer do you
20 feel.

21 THE COURT: He never gave a flat out
22 answer. I asked him twice. That's why I think he
23 is a cause challenge. I never got an unequivocal
24 response.

25 MR. LAMB: That's what I thought, we

1 never got an unequivocal response.

2 THE COURT: Never did.

3 MR. LAMB: That's it.

4 (The following took place in open court:)

5 THE COURT: The lawyers are going to talk
6 to you in a little while starting with the DA. If
7 they ask you any questions you would like to
8 answer or discuss privately just tell him.

9 MR. KATCHEN: Thank you, your Honor.

10 Ladies and gentlemen, like the judge said
11 I am Assistant District Attorney Anthony Katchen.
12 I am prosecuting this case with Assistant District
13 Attorney Raja Rajeswari.

14 Now before I get into very specific
15 directed questions I just want to start with one
16 more round of general questions. I will ask that
17 we start down here at one and work our way around.
18 I have three questions, if you could just state
19 whether you're married, single, divorced, or
20 other; if you have any children; and whether or
21 not you live in a private home or an apartment.

22 Mr. Merrick, if you can answer.

23 PROSPECTIVE JUROR: I am married, I have
24 two children and I live in a private home.

25 MR. KATCHEN: Mr. Schlaeger.

1 PROSPECTIVE JUROR: I am married, two
2 children. Married.

3 PROSPECTIVE JUROR: Married With
4 children, private home.

5 PROSPECTIVE JUROR: Single, no children,
6 private home.

7 PROSPECTIVE JUROR: Married, private
8 home, three children.

9 PROSPECTIVE JUROR: Single, private home,
10 no children.

11 PROSPECTIVE JUROR: Married, three
12 children, private home.

13 PROSPECTIVE JUROR: Married, one boy,
14 private home.

15 PROSPECTIVE JUROR: Married, private
16 home, little boy and baby girl.

17 PROSPECTIVE JUROR: Engaged, no children.

18 MR. KATCHEN: Congratulations.

19 PROSPECTIVE JUROR: No children, private
20 house.

21 PROSPECTIVE JUROR: Domestic partnership
22 and I have two children.

23 PROSPECTIVE JUROR: Married, private
24 home, three children.

25 PROSPECTIVE JUROR: Married, private

1 home, no kids.

2 PROSPECTIVE JUROR: Married, three
3 daughters, private home.

4 PROSPECTIVE JUROR: I live with my
5 girlfriend. She has two kids, private home.

6 PROSPECTIVE JUROR: Divorced, no kids,
7 private home.

8 MR. KATCHEN: Obviously for those of you
9 who remain in the box while we sat over there if
10 there is anything that I ask you or I will speak
11 for defense counsel now as well, if there is
12 anything anybody asked you that you feel should be
13 discussed privately don't be afraid to say that.
14 We're not here to embarrass anybody and we are not
15 here to pry too deeply into your lives.

16 The judge when we started I guess you
17 guys may have all been sitting out there, gave
18 you a general description what this case is about.
19 There are charges that involve domestic violence
20 and rape.

21 Now other than you don't want to hear
22 about those types of things, nobody really wants
23 to hear about it and that it doesn't sound like a
24 fun way of spending the next week, does that alone
25 -- is there anybody that thinks that alone -- you

1 know maybe you have the ability to sit on a
2 criminal jury but maybe this case isn't for you?
3 Just by a show of hands anybody feel that way?

4 THE COURT: What is your question? Are
5 you asking if the nature of the charges would
6 prevent them being able to be fair and impartial?

7 MR. KATCHEN: Yes.

8 THE COURT: So that's the question.

9 MR. KATCHEN: Ma'am.

10 PROSPECTIVE JUROR: Patricia Comerford.
11 I work in x-ray and I've been involved in x-raying
12 women and it really --

13 MR. LAMB: I'm sorry, I am having trouble
14 hearing.

15 PROSPECTIVE JUROR: I work in x-ray and I
16 have been involved in x-raying sometimes a couple
17 of those cases in the past and I found it very
18 very disturbing. And I mean I'm sure as a woman I
19 found it very disturbing.

20 MR. KATCHEN: You found it disturbing to
21 hear those questions?

22 PROSPECTIVE JUROR: And on taking care of
23 these women.

24 MR. KATCHEN: Okay.

25 PROSPECTIVE JUROR: I found it very

1 upsetting. I did.

2 MR. KATCHEN: Okay. There are a few
3 people with hands up.

4 Sir?

5 PROSPECTIVE JUROR: Brian Ritchie. Two
6 months ago I would have answered your question no.
7 I just had a baby girl. Those charges stir up
8 something.

9 MR. KATCHEN: If I were to tell you there
10 are no children involved in this case does that
11 change your opinion?

12 PROSPECTIVE JUROR: No. My daughter will
13 eventually be an adult so.

14 MR. KATCHEN: Okay.

15 THE COURT: You are going to have to
16 follow this up. I don't know what Mr. Ritchie's
17 position is. Can he be fair or not?

18 MR. KATCHEN: Mr. Ritchie, do you think
19 that -- explain how it's going to affect your
20 ability to be able to sit on the jury.

21 THE COURT: I don't know that it will. He
22 didn't say that yet.

23 MR. KATCHEN: Do you think the fact that
24 you have a daughter that's going to impact the way
25 in which you view the evidence that's presented to

1 you?

2 PROSPECTIVE JUROR: If I get selected I
3 would need to rid myself of preconceived notions
4 before being impartial.

5 MR. KATCHEN: Thank you.

6 THE COURT: If selected he'd rid himself
7 of preconceived notions.

8 MR. KATCHEN: You would be able to do
9 that?

10 PROSPECTIVE JUROR: Yes.

11 PROSPECTIVE JUROR: Amy Scaravaggio. I
12 have an 18-year-old daughter and that whole notion
13 of charges upset me.

14 MR. KATCHEN: Well, again --

15 PROSPECTIVE JUROR: Could I be impartial?
16 I don't know.

17 MR. KATCHEN: This isn't a response to
18 you. I am not trying to -- the evidence is going
19 to sort of be contained by what you hear from the
20 witness stand. Do you have the ability to sort of
21 ignore for a moment while you're deliberating
22 thinking about the evidence?

23 PROSPECTIVE JUROR: Yes.

24 MR. KATCHEN: Ma'am.

25 PROSPECTIVE JUROR: That was my -- I am

1 Caroline Ferreri. That was my first thought. I
2 said, My God, I have three daughters age 22, 29,
3 37 and that just flashed in front of my face. In
4 the beginning I got a little nervous. But I would
5 love to think that I could be a great juror and do
6 my job. I just don't know once I hear everything.
7 I don't know.

8 MR. KATCHEN: Okay. Did anybody else
9 have their hands raised?

10 PROSPECTIVE JUROR: I also have daughters
11 and granddaughters that age so it is disturbing.
12 I think I could just look at the evidence.

13 MR. KATCHEN: Okay. You are going to be
14 able to put that aside?

15 PROSPECTIVE JUROR: I think I could, yes.

16 MR. KATCHEN: I am going to move past
17 that sort of general questioning.

18 And you had mentioned preconceived
19 notions before and a lot of us have preconceived
20 notions of the concept of rape. It's not
21 something that many people think about. And even
22 so we have firm beliefs as to what it is.

23 And when I say rape there is a good
24 chance of a picture is formed in your mind that
25 involves like a stranger dragging somebody into an

1 alley.

2 Is that -- just by a show of hands, is
3 that what people think of when they hear rape or
4 no? Show of hands if that's a yes.

5 PROSPECTIVE JUROR: That's part of it. I
6 would think you don't know your assailant and
7 domestication you know your assailant. Is that
8 rape or non-consensual sex.

9 MR. KATCHEN: That's the question. Do
10 you believe you can be raped in a domestic
11 relationship as you put it?

12 PROSPECTIVE JUROR: Yes.

13 PROSPECTIVE JUROR: Yes.

14 MR. KATCHEN: Does anybody disagree with
15 that? I see a lot of people shaking their head
16 now. Why do you believe that?

17 PROSPECTIVE JUROR: Caroline Ferreri.
18 Well, as a woman if I said to my husband, no, I
19 mean no. And if he insists that it's just -- it's
20 a fine line between rape and non-consensual sex
21 especially because it's your partner. If somebody
22 pulls you off the street to me that's out and out
23 rape. Somebody you don't know at the bar, you
24 have a drink and you think you are going to have a
25 good time and he takes advantage, that's rape.

1 Now I don't know the full case, domestic
2 case where you knew the woman or it was a
3 stranger. I don't know the full -- you know, full
4 charge.

5 MR. KATCHEN: If you are picked for the
6 jury you are going to hear the evidence. But for
7 now you mentioned that this is a fine line between
8 rape and non-consensual sex. I am not going to
9 get into what the definitions of rape are now.
10 That's for the judge to do.

11 But tell me what you mean by that. What
12 is your -- how do you differentiate the two?

13 PROSPECTIVE JUROR: Like I said if you're
14 in a situation with a fellow and he wants to make
15 a move on you, you have a relationship and you say
16 no, he thinks yes, and you fight him off, still
17 insists with going through with it, that to me is
18 rape.

19 MR. KATCHEN: And what would you say
20 would be non-consensual sex? Did I hear you
21 incorrectly before?

22 PROSPECTIVE JUROR: Well, rape is
23 performed on a woman who does not want to have
24 sex. Non-consensual sex is I don't want to have
25 sex, but yet the fellow in the situation does it

1 to you anyway. That's still rape.

2 MR. KATCHEN: Oh, okay. I'm sorry, I
3 thought you were differentiating between the two.

4 Did you want to say something?

5 PROSPECTIVE JUROR: I was going to try to
6 say I thought she was saying that rape and
7 non-consensual sex were the same.

8 PROSPECTIVE JUROR: He's forcing himself
9 on her.

10 PROSPECTIVE JUROR: That's the same
11 thing.

12 PROSPECTIVE JUROR: Yes. Same thing
13 doing it to the woman or pulling a woman and doing
14 it, that to me is still rape.

15 MR. KATCHEN: Does anybody think
16 differently? Does anybody think that we have to
17 take -- you know, we take a situation where people
18 may be dating, may be in a domestic relationship
19 and we have to analyze that differently?

20 Mr. Santlofer, did I pronounce your name
21 correct? What do you think about that?

22 PROSPECTIVE JUROR: Anything that's
23 unwanted to me is wrong.

24 THE COURT: So whether it's somebody
25 that's been dating for a long time, a short time

1 or a total stranger, they say, no, it's no.

2 PROSPECTIVE JUROR: It's no. It's no.

3 MR. KATCHEN: Now in the context of a
4 domestic relationship or just any relationship,
5 living together, boyfriend/girlfriend, I want to
6 talk a little bit about the reaction you would
7 expect from somebody that was saying they were
8 raped.

9 By a show of hands -- and I know this may
10 be a little difficult so I am going to try to make
11 it as sort of neutral as possible. Just by a show
12 of hands who thinks if they were abused, if they
13 knew somebody who was abused by their significant
14 other they would leave that relationship?

15 PROSPECTIVE JUROR: What's the question?

16 MR. KATCHEN: If they were abused or knew
17 somebody that was abused by their partner if they
18 would leave that relationship just by a show of
19 hands?

20 PROSPECTIVE JUROR: I don't understand.

21 MR. LAMB: Sexually abused?

22 MR. KATCHEN: Physically abused.

23 PROSPECTIVE JUROR: So if we know
24 somebody who was abused in whatever way, do we
25 think that person would leave their partner?

1 MR. KATCHEN: Do you think that person
2 should?

3 (Hands raised.)

4 MR. KATCHEN: Pretty much everybody
5 raised their hands right off the bat with that.

6 I imagine that a lot of people feel that
7 way and there is nothing wrong with thinking that
8 way.

9 By the same sort of questioning let's
10 apply it to real life. How many people think that
11 every woman that is abused, physically, sexually
12 by their significant other leaves the
13 relationship?

14 PROSPECTIVE JUROR: Are you saying how
15 many in reality leave?

16 MR. KATCHEN: Do you think that in
17 reality every woman is going to leave?

18 ALL JURORS: No.

19 MR. KATCHEN: Now I want to really
20 discuss that in a little bit more depth. Now I
21 realize that you think everybody should leave.
22 But nobody seemed to think that every women does
23 leave.

24 And, Mr. Merrick, I will start with you.
25 I apologize for calling you out. Could you think

1 of a reason why somebody wouldn't leave?

2 MR. LAMB: I am going to object.

3 THE COURT: Sustained.

4 MR. KATCHEN: All of you indicated that
5 you believed a woman should leave. I am not going
6 to repeat that a million times. Would you keep an
7 open mind if you hear evidence from somebody that
8 didn't leave?

9 PROSPECTIVE JUROR: Yes.

10 MR. KATCHEN: And you'll consider --
11 you'll consider the reason why a person wouldn't
12 leave that relationship.

13 Is there any reason that -- I guess,
14 Mr. Sisti, is there a reason you could think of
15 why somebody wouldn't leave?

16 MR. LAMB: Objection.

17 THE COURT: Sustained.

18 MR. KATCHEN: Ma'am, do you think that
19 the fact that somebody doesn't immediately leave
20 an abusive situation is indicative of whether or
21 not a crime was committed?

22 PROSPECTIVE JUROR: Scaravaggio. Could
23 you rephrase that a little bit for me?

24 MR. KATCHEN: Okay. If somebody -- if
25 somebody accuses let's say their boyfriend, that

1 they abused me and this happened months ago, I
2 have stayed with him, what impact if any does that
3 have as to whether you would analyze whether or
4 not a crime actually took place?

5 THE COURT: I don't understand the
6 question.

7 MR. LAMB: I don't understand the
8 question.

9 THE COURT: Sustained.

10 MR. KATCHEN: I don't think I did either.
11 I am going to do my best to rephrase.

12 If somebody doesn't leave an abusive
13 situation and then you hear that person tell you
14 about the abuse that they had suffered, how does
15 the fact that they stayed affect whether or not
16 you believe them?

17 MR. LAMB: Again, objection.

18 THE COURT: Sustained. I think we have
19 to pick a fair jury, not to get an advisory
20 verdict.

21 MR. KATCHEN: Okay. We're going to move
22 off that topic.

23 Ms. Comerford, did I pronounce that
24 right?

25 PROSPECTIVE JUROR: Yes. Comerford.

1 MR. KATCHEN: Do you expect to find
2 injury to the vaginal area of a woman who had been
3 raped?

4 MR. LAMB: Again, I am going to object.

5 THE COURT: You can rephrase that. I
6 will sustain the objection to the form would you
7 expect to find. If you want to ask the jurors if
8 they can keep an open mind as to whether a rape
9 occurred or did not regardless of physical injury,
10 that's a fair question.

11 MR. KATCHEN: Okay. The way in which the
12 judge stated that question, did you hear what the
13 judge said?

14 PROSPECTIVE JUROR: No.

15 MR. KATCHEN: Would you be able to keep
16 an open mind as to whether or not a rape took
17 place if there was no presentation of injury to a
18 woman's vagina?

19 PROSPECTIVE JUROR: Yes.

20 MR. KATCHEN: You would?

21 PROSPECTIVE JUROR: Yes.

22 MR. KATCHEN: Is there anybody that has a
23 problem with that, if you didn't hear about an
24 injury?

25 Mr. Ritchie?

1 PROSPECTIVE JUROR: Do I have a problem
2 with it?

3 MR. KATCHEN: Would you have a problem
4 with assessing the evidence? Does that make it
5 more difficult for you in assessing the evidence?

6 PROSPECTIVE JUROR: I would think that
7 the prosecution would need to work that much
8 harder to prove that a crime did occur if there is
9 no physical evidence.

10 MR. KATCHEN: As the case progressed
11 would you keep an open mind and hear what the
12 prosecution had to say, what the witnesses had to
13 say about reasons or the lack thereof for any type
14 of an injury?

15 PROSPECTIVE JUROR: Beyond the physical
16 evidence?

17 MR. KATCHEN: Right.

18 PROSPECTIVE JUROR: Yes.

19 MR. KATCHEN: When we think of evidence,
20 witness testimony evidence you are going to hear
21 from -- the judge gave you a list of I think
22 thirteen or fourteen names. You are not going to
23 hear from everybody I'm sure. But you're going to
24 be put in a position where you have to assess the
25 credibility of witnesses.

1 Now, Mr. Rand, how do we assess
2 credibility?

3 PROSPECTIVE JUROR: I guess basically
4 assess credibility I guess by supporting evidence
5 and sometimes people bring character witnesses to
6 vouch for I guess a person's --

7 MR. KATCHEN: You know what? Let me make
8 this a little bit easier for you. Forget about
9 the courtroom. We have to judge credibility every
10 day.

11 PROSPECTIVE JUROR: Right.

12 MR. KATCHEN: Somebody tells you
13 something, you have to decide whether or not that
14 person is telling the truth.

15 PROSPECTIVE JUROR: Right.

16 MR. KATCHEN: Usually this is just like
17 an instant decision. It just happens in your
18 head. But I want to really break down that
19 process.

20 PROSPECTIVE JUROR: I guess breaking it
21 down it would have to sound reasonable.

22 MR. KATCHEN: Okay.

23 PROSPECTIVE JUROR: If somebody said
24 something that didn't sound reasonable then I
25 question their credibility. But if someone said

1 something and it was plausible then I would assume
2 that they're telling the truth.

3 MR. KATCHEN: Okay.

4 Mr. Schlaeger, what about you? How do
5 you tell whether somebody is telling you the
6 truth?

7 PROSPECTIVE JUROR: Well, it would depend
8 if they're experts in the field of what they're
9 actually saying, you know, whether it be medical
10 records or anything along those lines, I would
11 feel that it's credible.

12 MR. KATCHEN: Let's say it's not an
13 expert, it's just a regular person. It's you or
14 me that's telling you, you know, the sky's blue,
15 it's raining outside, how do you assess whether
16 that person is telling you the truth?

17 PROSPECTIVE JUROR: How would I assess it?
18 I guess that would be hard for me to do.

19 MR. KATCHEN: Okay. In all cases you
20 would need more than just I guess trusting your
21 own assessment of that person.

22 I understand you'll be presented with
23 other factors, but I mean let me ask you this,
24 would it be important to you to consider whether
25 or not a person has a reason to lie?

1 PROSPECTIVE JUROR: Would it be important
2 to me? Yes.

3 MR. KATCHEN: You would want to know
4 that.

5 PROSPECTIVE JUROR: Yes.

6 MR. KATCHEN: Mr. Santlofer, were you
7 nodding your head?

8 PROSPECTIVE JUROR: I would want to know
9 if somebody had a reason to lie.

10 MR. KATCHEN: And could you think of a
11 reason why a victim of a rape would lie?

12 PROSPECTIVE JUROR: Without knowing the
13 situation I can't really.

14 MR. KATCHEN: Okay.

15 PROSPECTIVE JUROR: Maybe she needed
16 money. Who the hell knows.

17 MR. KATCHEN: Shame?

18 PROSPECTIVE JUROR: Shame. Maybe that's
19 money like extort them like Tyson, something like
20 that.

21 PROSPECTIVE JUROR: It would be many
22 reasons. Jealousies.

23 MR. KATCHEN: So people have reasons to
24 lie about things.

25 PROSPECTIVE JUROR: Sure.

1 MR. KATCHEN: Bring it back together
2 whether it's about rape or it's about anything, if
3 somebody has a reason to lie that's going to be a
4 factor.

5 PROSPECTIVE JUROR: Yes.

6 MR. KATCHEN: Thank you.

7 THE COURT: Mr. Lamb.

8 MR. LAMB: Thank you, Judge.

9 Good afternoon, ladies and gentlemen.
10 One of the nice things about being the defense
11 attorney is that by the time it's my turn most of
12 the important questions have already been asked.
13 My job is relatively easy.

14 First of all, I want to apologize. You
15 will see me reaching into my pocket and taking out
16 dirty tissues constantly. I am suffering from
17 allergies and I apologize in advance if that's
18 kind of a disgusting thing to watch, I'm sure. I
19 just have no choice.

20 I guess by now you've gotten a little bit
21 of an idea what this case is about. You heard the
22 term rape, and you know now that we're not talking
23 about the traditional quote-unquote traditional
24 rape situation or the stranger that jumps out of
25 the bushes and drags the female jogger into the

1 bushes and rapes her. We are not talking about
2 the pervert that goes down to the playground and
3 snatches little kids.

4 We're talking right now, right now we're
5 talking about a couple who had a relationship and
6 lived together for a period of four or five months
7 and the accusation -- the allegations here are
8 that during that period of time he, on numerous
9 occasions, forced himself on her. That is
10 basically the picture of this trial.

11 What the evidence shows it will show. If
12 you're selected as a juror at the close of the
13 entire case you will have all of the evidence and
14 as a juror you'll make a decision one way or the
15 other whether my client is guilty or whether he's
16 innocent.

17 My concern right now is whether any of
18 you have any preconceptions, any experiences in
19 your life that would make it impossible for you to
20 be objective. All we're asking for at this point
21 is a fair trial from twelve jurors who because of
22 prior experiences in their life wouldn't be able
23 to give my client a fair trial.

24 So let me ask you this: Is there anybody
25 here -- and, again, I echo the words of my

1 adversary, we're not asking any of these questions
2 to be nosy or to embarrass anybody, but we have to
3 know a certain amount of information from you in
4 order to know whether we feel you could be fair.

5 Is there anybody here who has ever been
6 in a relationship, an extremely painful
7 relationship where they feel that they perhaps
8 were wronged or been victimized to the point where
9 they may feel that they might side with one side
10 or the other before they even hear the evidence?

11 Is there anybody here who's been in a
12 particularly bad, dysfunctional or painful
13 relationship?

14 PROSPECTIVE JUROR: Amy Scaravaggio.

15 MR. LAMB: Yes.

16 PROSPECTIVE JUROR: To your last
17 question, yes.

18 MR. LAMB: Okay. And it was a
19 relationship you were in personally?

20 PROSPECTIVE JUROR: Yes.

21 MR. LAMB: And as a result of that do you
22 think that you could keep an open mind when you
23 are listening to the testimony in this case?

24 PROSPECTIVE JUROR: No.

25 MR. LAMB: Thank you for your candor.

1 Anybody else that feels that they've been
2 in a relationship which was so painful, so
3 traumatic that it would make it difficult for them
4 to hear the testimony about an admittedly
5 dysfunctional relationship and keep an open mind
6 as to whether my client committed the acts that
7 he's charged with?

8 Now, Mr. Schlaeger, just to touch on
9 something that sort of came out during one
10 question that was asked of you. You had mentioned
11 something about experts. If an expert --

12 PROSPECTIVE JUROR: Well, if you have a
13 witness here and they're experts and they're
14 saying that there was some showing that this
15 individual had sexual intercourse, of course, I
16 don't know how they would be able to tell if that
17 was forced on them or not. But they must have
18 some information that would be --

19 MR. LAMB: Well, I don't want to get into
20 the details of what kind of expert we may have in
21 this particular case. But just experts in general
22 do you accept the proposition that experts are
23 after all human and just suffer the same human
24 frailties as all other people? They are just as
25 capable be of making mistakes?

1 PROSPECTIVE JUROR: Absolutely.

2 MR. LAMB: So you will not automatically
3 take at face value anything that an expert tells
4 you. You would listen just as carefully to his
5 testimony just as you would with any other
6 witness.

7 PROSPECTIVE JUROR: Exactly.

8 MR. LAMB: Do I have your assurance of
9 that?

10 PROSPECTIVE JUROR: Yes.

11 MR. LAMB: Do I have that assurance of
12 all of you? When experts testify you will listen
13 as carefully to their testimony, will not take
14 what they say at face value?

15 Now my role here is obviously I am a
16 defense attorney. I am here to defend my client.
17 Most of the witnesses that will be called will be
18 called by the District Attorney. After they've
19 testified for the District Attorney I get an
20 opportunity to cross-examine them, to ask them
21 questions in an effort to show that they are not
22 as believable as the District Attorney would like
23 you to believe they are.

24 Does anybody find, believe or feel that
25 that is kind of like badgering or picking on

1 somebody for cross-examining a witness? When I
2 cross-examine the witness will you listen just as
3 carefully to my cross-examination as you listened
4 to the direct examination when the District
5 Attorney was questioning that witness? Do I have
6 that assurance from all of you?

7 ALL JURORS: Yes.

8 MR. LAMB: Now there may come times when
9 I object. There may come times when the District
10 Attorney objects. Objection, your Honor. Do you
11 understand that this is just our argument about
12 an item of law and not something that we're trying
13 -- we're trying to hide something from you. You
14 promise -- do all of you promise that you will not
15 hold it against either one of us if we object to
16 something?

17 Now you've heard briefly the judge
18 describe proof beyond a reasonable doubt. Burden
19 of proof being on the District Attorney and that
20 the defendant is entitled to a presumption of
21 innocence. We in most our endeavors in society
22 believe in what you might call fair play, a level
23 playing field, even sides.

24 Is there anybody here that feels that
25 somehow this burden of proof on the DA, this

1 presumption of innocence that the defendant is
2 entitled to somehow gives him some sort of an
3 unfair advantage?

4 Do you all except the proposition that
5 the People have the burden of proving guilt beyond
6 a reasonable doubt and that the defendant has a
7 right to be presumed innocent unless or until he
8 is proven guilty?

9 PROSPECTIVE JUROR: Can I ask a question?

10 MR. LAMB: Yes, Mr. Ritchie.

11 PROSPECTIVE JUROR: There already was an
12 indictment or there was not.

13 MR. LAMB: There has been an indictment
14 but the indictment -- as his Honor explained to
15 you, the indictment is no evidence whatsoever.
16 It's only a piece of paper. A piece of paper that
17 says I accuse you of committing a crime.

18 Can you accept that or do you believe
19 that where there is smoke there is fire? If he
20 got indicted maybe he did something wrong.

21 PROSPECTIVE JUROR: That seems to make
22 sense, but I understand the judicial process
23 that's not the case.

24 MR. LAMB: If I accuse you of robbing me
25 on the street and I put it down on a piece of

1 paper, does it make it any more true?

2 PROSPECTIVE JUROR: No.

3 MR. LAMB: Okay. I still have to prove
4 that you robbed me. You think that's fair? You
5 think that's the way it should be?

6 PROSPECTIVE JUROR: Yes.

7 MR. LAMB: You accept that?

8 PROSPECTIVE JUROR: Yes.

9 MR. LAMB: Do all of you accept that?

10 My last question is if you're selected as
11 jurors here today do I have the assurance of each
12 and every one of you that you will give my client
13 the same kind of trial, the same kind of fairness
14 that you would expect if you were sitting where he
15 is sitting now?

16 MS. RAJESWARI: Objection.

17 THE COURT: Overruled. You can answer
18 that.

19 MR. LAMB: Do I have that assurance?

20 ALL JURORS: Yes.

21 MR. LAMB: Thank you.

22 THE COURT: Okay. We'll give the lawyers
23 a few minutes to go over their notes. It's
24 probably going to take about ten minutes. If you
25 would like to step out go right ahead or you can

1 stay where you are.

2 The rule at this point is don't discuss
3 the case with each other or anyone else. Thank
4 you for your patience.

5 (The following took place at the sidebar
6 with the defendant present on the record:)

7 THE COURT: Just for the record we are at
8 a sidebar with the lawyers and the defendant is
9 also present at the sidebar.

10 Does this change your position in terms
11 of the sidebar conferences?

12 MR. LAMB: Just for the challenges.

13 THE COURT: That's fine. Whatever you
14 like. We're going to go one at a time. I am a
15 little confused how this is going to work out.

16 Seat Number 1, Mr. Merrick. Cause
17 People?

18 MR. KATCHEN: No.

19 THE COURT: Defense?

20 MR. LAMB: No.

21 THE COURT: Peremptory People?

22 MR. KATCHEN: No.

23 THE COURT: Defense?

24 MR. LAMB: Yes.

25 THE COURT: Number 2 is Mr. Schlaeger.

1 Cause People?

2 MR. KATCHEN: No.

3 THE COURT: Defense?

4 MR. LAMB: Comerford you said number one.

5 THE COURT: No cause. No cause. No
6 preemptory. You asked for preemptory.

7 MR. LAMB: I thought we had moved to
8 Number 2.

9 MS. RAJESWARI: We never did number one.

10 THE COURT: You want one?

11 MR. LAMB: I do want one.

12 THE COURT: Are you withdrawing your
13 preemptory to number one?

14 MR. LAMB: I thought it was Number 2 was
15 going to be seated number -- as Juror Number 1.

16 MR. LAMB: Yes.

17 THE COURT: Carmine, that's number one.

18 Next is Schlaeger. Cause People?

19 MR. KATCHEN: No cause.

20 THE COURT: Defense?

21 MR. LAMB: No.

22 THE COURT: Peremptory People?

23 MR. LAMB: No.

24 THE COURT: Defense?

25 MR. LAMB: Yes.

1 THE COURT: Next Ms. Comerford. Cause
2 People?

3 MR. KATCHEN: No cause.

4 THE COURT: No cause. Defense?

5 MR. LAMB: She did say -- I don't think
6 she was rehabilitated as an x-ray technician. She
7 frequently sees rape victims. She said that it
8 would be difficult for her to be fair, so I
9 challenge her for cause.

10 THE COURT: You want to be heard?

11 MR. KATCHEN: She did say that.

12 MS. RAJESWARI: We will consent.

13 THE COURT: She also said that the police
14 relatives wouldn't prevent her from being fair. I
15 talked about war stories.

16 In any event that's cause on consent.

17 Next is Santlofer. Cause People?

18 MR. KATCHEN: No challenge.

19 THE COURT: Defense?

20 MR. LAMB: No cause.

21 THE COURT: Peremptory People?

22 MR. KATCHEN: No.

23 THE COURT: Defense?

24 MR. LAMB: Yes.

25 THE COURT: Next is Scaravaggio. Cause

1 People?

2 MR. KATCHEN: No.

3 THE COURT: Defense?

4 MR. LAMB: Yes. She indicated there was
5 a relationship that would make her unable to be
6 fair.

7 MS. RAJESWARI: She did. We'll consent.

8 THE COURT: Cause on consent.

9 Next is Santoro. Cause People?

10 MR. KATCHEN: No.

11 THE COURT: Defense?

12 MR. LAMB: No.

13 THE COURT: Peremptory People?

14 MR. KATCHEN: No.

15 THE COURT: Defense?

16 MR. LAMB: No.

17 THE COURT: So that's Juror Number 2,
18 Carmine.

19 THE CLERK: Yes, sir.

20 THE COURT: Next is Paolino. Cause
21 People?

22 MR. KATCHEN: At the sidebar -- yes.

23 THE COURT: Cause.

24 MR. LAMB: My client likes him. So I
25 would say I have no cause.

1 MR. KATCHEN: I will make my record. We
2 were discussing at sidebar he never gave a
3 straight answer. He didn't know if he can be fair
4 with his experience with his nephew's case in New
5 Jersey. He said it would be emotionally difficult
6 for him. He never gave the Court an answer.

7 MS. RAJESWARI: He couldn't say.

8 THE COURT: You want to be heard further?

9 MR. LAMB: No.

10 THE COURT: I agree with the DA. He just
11 would not give me an unequivocal response and
12 indicated it was a very emotional time for him and
13 his family. I can't say he has the proper state
14 of mind. I will grant the cause challenge.

15 Next is Mr. Sisti. Cause People?

16 MR. KATCHEN: No.

17 THE COURT: Cause?

18 MR. LAMB: No.

19 THE COURT: Perempt People?

20 MR. KATCHEN: No.

21 THE COURT: Defense?

22 MR. LAMB: No.

23 THE COURT: So that's Juror Number 3.

24 Next is Mr. Ritchie. Cause People?

25 MR. KATCHEN: No.

1 THE CLERK: Defense?

2 MR. LAMB: No.

3 THE COURT: Perempt People?

4 MR. KATCHEN: No.

5 THE COURT: Defense?

6 MR. LAMB: Yes.

7 THE COURT: Yes.

8 Next is Ms. Rippa. Cause People?

9 MR. KATCHEN: No.

10 THE COURT: Defense?

11 MR. LAMB: No.

12 THE COURT: Perempt People?

13 MR. KATCHEN: No.

14 THE COURT: Defense?

15 MR. LAMB: No.

16 THE COURT: So, Carmine, that's Juror 4.

17 THE CLERK: Yes, sir.

18 THE COURT: Next is Mr. Rand. Cause

19 People?

20 MR. KATCHEN: No, Judge.

21 THE COURT: Defense?

22 MR. LAMB: No.

23 THE COURT: Perempt People?

24 MR. KATCHEN: Yes, Judge.

25 THE COURT: Next is Santore. Cause

1 People?

2 MR. KATCHEN: No.

3 THE COURT: Cause defense. Ms. Santore.
4 People have no cause as to her. The question is
5 do you?

6 MR. LAMB: I'm sorry, Judge. I am
7 thinking of some of her answers. I think she said
8 nothing. For a cause challenge no cause.

9 THE COURT: Perempt People?

10 MR. KATCHEN: No.

11 THE COURT: Defense?

12 MR. LAMB: Yes.

13 THE COURT: Next is Mr. Ramirez. Cause
14 People?

15 MR. KATCHEN: Your Honor, he also at
16 sidebar discussed he knew somebody that had been
17 alleged to have engaged in some sort of conduct.
18 While he sort of gave an answer, he put that
19 aside. It was never really clear that he would be
20 able to remain impartial because of his knowledge
21 of that. Based on that I don't think he would be
22 impartial.

23 THE COURT: That's a cause?

24 MR. KATCHEN: Yes.

25 THE COURT: Mr. Lamb, you want to be

1 heard?

2 MR. LAMB: I'm sorry. I think I
3 rehabilitated him. I asked him some point-blank.

4 THE COURT: I don't know that he needed
5 rehabilitating. He didn't say anything that I
6 heard that indicated he would support a cause
7 challenge. You are opposing?

8 MR. LAMB: Yes.

9 THE COURT: I will deny that cause
10 challenge. You don't have a cause obviously.

11 MR. LAMB: Yes.

12 THE COURT: Peremptory?

13 MR. KATCHEN: Yes.

14 THE COURT: Next is Ms. Ferreri. Cause
15 People?

16 MR. KATCHEN: No cause.

17 THE COURT: Defense?

18 MR. LAMB: Yes.

19 THE COURT: Cause challenge. Are you
20 consenting or not?

21 MR. KATCHEN: No.

22 THE COURT: You want to make your case?
23 You want me to make it?

24 MR. LAMB: Yes.

25 THE COURT: She said I'd like to think I

1 can be fair but I don't know if I can. So that's
2 a cause challenge. I will grant that. That's
3 defense cause granted.

4 Next is Mr. Pereyra. Cause People?

5 MR. KATCHEN: No.

6 THE COURT: Defense?

7 MR. LAMB: No.

8 THE COURT: Peremptory People?

9 MR. KATCHEN: No.

10 THE COURT: Defense?

11 MR. LAMB: No.

12 THE COURT: That's Juror Number 5,
13 Carmine.

14 THE CLERK: Yes, sir.

15 THE COURT: Lastly, Mr. Maxwell. Cause
16 People?

17 MR. KATCHEN: No.

18 THE COURT: Defense?

19 MR. LAMB: No.

20 THE COURT: Peremptory People?

21 MR. KATCHEN: Yes.

22 THE COURT: Where do we stand on
23 challenges?

24 THE CLERK: People used three. Defense
25 used four.

1 THE COURT: What do you want me to tell
2 these five we are about to swear in? Tomorrow
3 afternoon?

4 MR. LAMB: I'd rather have them.

5 THE COURT: You want to have them in the
6 courtroom?

7 MR. LAMB: I would rather.

8 THE COURT: If you want. That's your
9 privilege. We're going to be breaking for the day
10 and we're going to resume 10 a.m. We'll have the
11 sworn jurors in?

12 MR. LAMB: Yes.

13 MS. RAJESWARI: You want them to hear the
14 other questions?

15 MR. LAMB: Yes.

16 (The following took place in open court:)

17 THE CLERK: The following jurors have
18 been selected for this case: Brian Merrick, you
19 are Juror Number 1. Matthew Santoro, you are
20 Juror Number 2. James Sisti, you are Juror
21 Number 3. Melissa Rippa, you are Juror Number 4.
22 And Omar Pereyra, you are Juror Number 5. If I
23 called your name remain seated.

24 If I did not, you are excused from this
25 case with the thanks of the Court. Return now

1 across the street to central jury for your next
2 trial. Thank you. If I did not call your name
3 please stand, go across the street.

4 (Prospective jurors not selected left the
5 courtroom.)

6 THE CLERK: Will the five jurors in the
7 box stand and raise your right hand to be sworn as
8 trial jurors?

9 Do you and each of you solemnly swear
10 that you will try this action in a just and
11 impartial manner and to the best of your judgment
12 render a verdict according to the law and the
13 evidence so help you God?

14 ALL JURORS: Yes.

15 THE COURT: Thank you. You can have a
16 seat. It's 4:30. I have another case I have to
17 handle. I can't adjourn it. I have to deal with
18 it. So we're going to break for the afternoon.
19 We're going to resume tomorrow morning.

20 What I'd like to do is this: I'd like to
21 have the sworn jurors, five of you who were just
22 sworn, be in the jury room right across the hall.
23 The officers will show you where it is when you go
24 out, quarter to ten.

25 I would like everyone in the audience

1 talk to you tomorrow. We'd like you to be back in
2 central jury where you were this morning at
3 quarter to ten and I will send an officer over to
4 bring you back, to bring you over here.

5 So that's quarter to ten for everybody.
6 Sworn jurors in the jury room. Those of you we
7 haven't talked to yet central jury and we'll bring
8 you over.

9 Before I let you go I have to advise you
10 as follows: You must not discuss this case with
11 each other or anyone else. Do not prior to being
12 discharged from this matter speak with anyone
13 about taking anything, any payment or benefit in
14 return for supplying information concerning this
15 trial. You must promptly report directly to me
16 any incident within your knowledge involving an
17 attempt by any person to improperly influence you
18 or any other member of the panel or of the jury.
19 Don't visit or view the premises or place where
20 the charged crime is alleged to be committed. I
21 don't believe you've heard a location yet. If you
22 did, stay away from it.

23 Do not read or listen to any media
24 accounts, that includes newspaper, television
25 media or any other newspaper. Don't attempt to

1 research any fact, issue or law related to this
2 case whether by discussion with others, or by
3 research, library or Internet or by any other
4 means.

5 And, finally, as to our sworn jurors,
6 please keep an open mind, don't form any opinion
7 until all the evidence is in and you begin
8 deliberations.

9 Those of you in the audience if you had
10 an open mind please keep it. If you don't, we'll
11 find out tomorrow.

12 We'll take the sworn jurors out first.
13 We'll let the sworn jurors step out first.

14 (Five sworn jurors left the courtroom.)

15 (Prospective jurors left the courtroom.)

16 THE COURT: 9:45.

17 MS. RAJESWARI: Yes.

18 THE CLERK: Court's in recess.

19 (Matter adjourned to Thursday,
20 September 9, 2010, at 9:45 a.m.)
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25